

1. Background

122. One of the primary purposes of universal service support is to help provide access to telecommunications service in areas where the cost of such service otherwise might be prohibitively expensive.³²⁷ Historically, this purpose has been achieved both through explicit monetary payments and implicit support flows to enable carriers to serve high-cost areas at below-cost rates.

123. In the 1996 Act, Congress codified the Commission's historical policy of promoting universal service to ensure that customers in all regions of the nation have access to telecommunications services.³²⁸ Specifically, in section 254 of the Act, Congress instructed the Commission, after consultation with the Joint Board, to establish specific, predictable, and sufficient mechanisms to preserve and advance universal service.³²⁹ Moreover, recognizing the vulnerability of implicit support to competition, Congress directed the Commission and the states to take the necessary steps to create universal service mechanisms that would be sustainable in a competitive environment.³³⁰ To achieve this end, Congress directed that universal service support "should be explicit and sufficient to achieve the purposes of [section 254]."³³¹

124. The 1996 Act further establishes as a principle, on which we must base our universal service policies, that quality services should be available across the nation at affordable and reasonably comparable rates.³³² Support mechanisms should also require all providers of telecommunications services to make an equitable and nondiscriminatory contribution to the preservation and advancement of universal service.³³³ They should neither unfairly advantage nor disadvantage one provider over another, and neither unfairly favor nor disfavor one technology over another.³³⁴ Thus, any telecommunications carrier, using any technology,

³²⁷ *Rural Task Force Order*, 16 FCC Rcd at 11251 para. 13.

³²⁸ According to the Joint Explanatory Statement, the purpose of the 1996 Act is "to provide for a pro-competitive, deregulatory national policy framework designed to accelerate rapidly private sector deployment of advanced telecommunications and information technologies and services to all Americans by opening all telecommunications markets to competition . . ." Joint Explanatory Statement of the Committee of Conference, H.R. Conf. Rep. No. 458, 104th Cong., 2d Sess. at 113.

³²⁹ 47 U.S.C. § 254(a), (d).

³³⁰ See 47 U.S.C. § 254; see also H. Rep. No. 204, 104th Cong., 1st Sess. 80 (1995).

³³¹ 47 U.S.C. § 254(e).

³³² See *id.* at § 254(b)(1) and (3).

³³³ *Id.* at § 254(b)(4).

³³⁴ *Universal Service First Report and Order*, 12 FCC Rcd. at 8801-03 paras. 48-51. Besides the universal service principles specified in the 1996 Act, Congress directed that the Joint Board and the Commission be guided by such other principles as they determine to be consistent with the Act, and necessary and appropriate for the protection of the public interest, convenience, and necessity. 47 U.S.C. § 254(b)(7). At the recommendation of the Joint Board, the Commission adopted competitive neutrality as an additional principle for universal service. *Universal Service First Report and Order*, 12 FCC Rcd at 8801-03 paras. 48-51.

including wireless technology, is eligible to receive universal service support if it meets the criteria for “eligible telecommunications carrier” status under section 214(e)(1).³³⁵

125. Most rate-of-return carriers receive explicit support for intrastate rates through the Part 36 high-cost loop support mechanism and LSS, which provides support for the intrastate switching costs of carriers with fewer than 50,000 access lines.³³⁶ As discussed above, the Commission recently modified its rules for providing intrastate high-cost support to rural carriers based on proposals made by the Rural Task Force and recommended by the Joint Board.³³⁷ The Rural Task Force recommended against use of the Commission’s forward-looking mechanism for non-rural carriers to calculate high-cost support for rural carriers.³³⁸ Instead, it recommended use for the next five years of a modified version of the already existing high-cost loop support mechanism used for rural carriers.³³⁹ The Commission concluded that the Rural Task Force plan would, with certain modifications, “provide certainty and stability for rural carriers over the next five years,” and that the provisions for disaggregation and targeting of high-cost support would “facilitate competitive entry into high-cost areas, bringing the benefits of competition to consumers in rural areas.”³⁴⁰ Rate-of-return carriers also receive explicit support for interstate rates through the LTS program. LTS provides support for interstate loop costs to rate-of-return carriers that participate in the NECA common line pool.³⁴¹ In 1997, the Commission modified the LTS program to remove it from the interstate access rate structure.³⁴²

126. In addition, rate-of-return carriers receive implicit support for universal service from various sources, including the interstate access rate structure.³⁴³ As discussed above, the CCL charge permits rate-of-return carriers, to the extent that they cannot recover their non-traffic sensitive interstate loop costs through economically efficient, flat SLC charges, to recover such

³³⁵ *Universal Service First Report and Order*, 12 FCC Rcd. at 8858-59 paras. 145-47; 47 C.F.R. § 54.201.

³³⁶ See 47 C.F.R. §§ 36.601, 54.301; see also *supra*, § III.B.

³³⁷ See *supra*, § III.C.

³³⁸ *Rural Task Force Order*, 16 FCC Rcd at 11254 para. 18. The Commission determined in 1997 that federal universal service support for all carriers should be based on the forward-looking economic cost of providing the supported services. *Universal Service First Report and Order*, 12 FCC Rcd at 8899-901 paras. 224-229. The Rural Task Force was appointed to assist “in identifying the issues unique to rural carriers and analyzing the appropriateness of proxy cost models for rural carriers.” *Id.* at 8917 para. 253.

³³⁹ *Rural Task Force Order*, 16 FCC Rcd at 11253-54 para. 17. The Rural Task Force’s proposed modifications included various upward adjustments to current limits on universal service support for rural carriers. *Id.* at 11254 para. 18.

³⁴⁰ *Id.* at 11248-49 paras. 10-11.

³⁴¹ 47 C.F.R. §§ 54.303, 54.311(a); see *supra*, § III.B.

³⁴² *Universal Service First Report and Order*, 12 FCC Rcd at 9164-65 paras. 756-58 (“we agree with the Joint Board that LTS payments serve the public interest by reducing the amount of loop cost that high cost LECs must recover from IXCs through CCL charges and thereby facilitating interexchange service in high cost areas consistent with the express goals of section 254.”).

³⁴³ See *Universal Service Ninth Report and Order*, 14 FCC Rcd at 20441 para. 15 (“In contrast to explicit support, some state rate designs and, to a lesser extent, the federal interstate access charge system, have provided implicit high-cost support flowing from (1) urban areas to rural areas; (2) business customers to residential customers; (3) vertical services to basic service; and/or (4) long distance service to local service.”).

costs through a per-minute charge imposed on interexchange carriers, who pass the charge on to their customers in the form of higher long distance rates.³⁴⁴ This rate structure creates implicit support flows between different classes of customers.³⁴⁵

127. The MAG plan would reduce the CCL charge by permitting rate-of-return carriers to recover an increased portion of their common line costs through SLCs.³⁴⁶ Under the MAG plan, all rate-of-return carriers would retain LTS support. The MAG plan would further reduce per-minute switched access for some rate-of-return carriers by establishing an uncapped, explicit universal service support mechanism, available only to pooling carriers that opt for the MAG's proposed incentive regulation scheme. Finally, the MAG proposes increases in the Lifeline program commensurate with SLC increases.

2. Discussion

a. Interstate Common Line Support

128. We create the Interstate Common Line Support mechanism to replace the implicit support for universal service now recovered by rate-of-return carriers through the CCL charge. As set forth above, the CCL charge is an inefficient cost recovery mechanism and implicit subsidy that should be removed from the rate structure.³⁴⁷ The CCL charge represents an important revenue stream for rate-of-return carriers, however, recovering interstate loop costs that they cannot otherwise recover due to the existence of SLC caps. SLC caps, in turn, help to ensure that rates in high-cost, rural areas remain affordable and reasonably comparable to those in urban areas.³⁴⁸ We find that conversion of the CCL charge to explicit universal service support is consistent with the mandate of the Act, which provides that universal service support "should be explicit[]." ³⁴⁹ It also is consistent with our creation of an explicit support mechanism to replace implicit support for universal service in the access charges of price cap carriers.³⁵⁰ Interstate Common Line Support will enable rate-of-return carriers serving rural and high-cost areas to continue providing access to quality telecommunications services at rates that are

³⁴⁴ See *supra*, § IV.A.2.D. Under the Commission's current rules, rate-of-return carriers also recover non-traffic sensitive interstate loop costs through LTS support. See 47 C.F.R. §§ 54.303, 54.311(a); *supra*, § III.B.

³⁴⁵ See *Access Charge Reform Order*, 12 FCC Rcd at 16013 para. 76 ("For example, because end-user customers vary widely in their use of interstate long distance services, low-volume toll users do not pay the full cost of their loops while high-volume toll users contribute far more than the total cost of their loops. In addition high-volume toll users, who include significant numbers of low-income customers, effectively support non-primary residential and multi-line business customers."); see also *supra*, §§ III.A., IV.A.1.

³⁴⁶ The MAG does not identify to what extent its proposed access rate reductions would reduce the CCL charge, which is the primary source of implicit support. Also, under the MAG proposal, carriers that elect Path B of the MAG's incentive regulation plan would not reform their access rates, except to the extent CCL charge reductions occur as a result of increases to the SLC caps, and Path A carriers that are not members of the NECA pool would not receive explicit universal service support to replace lost revenues from the reformed access rate structure.

³⁴⁷ See *supra*, § IV.A.2.d.

³⁴⁸ See *supra*, § IV.A.2.a.

³⁴⁹ 47 U.S.C. § 254(e).

³⁵⁰ See *Interstate Access Support Order*, 15 FCC Rcd at 12974-77 paras. 29-35.

affordable and reasonably comparable to those in urban areas. By ensuring that the rate structure modifications we adopt in this Order do not affect their overall recovery of interstate access costs, Interstate Common Line Support also will help provide certainty and stability for rate-of-return carriers and encourage investment in rural America.

129. As an initial matter, we conclude that determining the appropriate level of interstate support for rate-of-return carriers based on embedded costs is a reasonable and prudent approach in light of the record before us. The Commission concluded in 1997 that federal universal service support for all carriers should be based on the forward-looking economic cost of constructing and operating the network used to provide the supported services, rather than each carrier's embedded costs.³⁵¹ We agree with commenters that favor a forward-looking economic cost methodology as the ideal method for determining appropriate levels of explicit support to replace implicit support within the interstate access charge system of rate-of-return carriers.³⁵² As the Commission recognized in the *Rural Task Force Order*, however, a forward-looking economic cost mechanism for rural carriers is not feasible at this time.³⁵³ Accordingly, the Commission recently adopted the recommendations of the Rural Task Force and the Joint Board for continued use over the next five years of a modified version of the intrastate high-cost support mechanism for rural carriers, which is based on embedded costs.³⁵⁴ For the reasons discussed above, we conclude that it is important that we proceed with access charge reform and universal service reform for rate-of-return carriers.³⁵⁵ Based on our examination of the record, therefore, we conclude that determining the appropriate level of interstate support for rate-of-return carriers based on embedded costs is a reasonable and prudent approach at this time.

130. Based on our examination of the record before us, we also find that it is reasonable and appropriate to size the new Interstate Common Line Support mechanism to provide support equal to the interstate loop costs that rate-of-return carriers do not recover through revenue from SLC rates, *i.e.*, the revenues from CCL charges that rate-of-return carriers otherwise would have received.³⁵⁶ As the Commission recognized in the *Interstate Access Support Order*, "identifying an amount of implicit support in our interstate access charge system to make explicit is an imprecise exercise."³⁵⁷ This is particularly so for rate-of-return carriers, given their size, diversity, and regulatory history.³⁵⁸ Accordingly, we must use our expertise and informed judgment to make a reasonable determination as to what constitutes "sufficient"

³⁵¹ See *Universal Service First Report and Order*, 12 FCC Rcd at 8899-901 paras. 224-229.

³⁵² See Ad Hoc Comments at 3-11, California Commission Comments at 2, 8, WorldCom Comments at 12-13, Ad Hoc Reply at 3-7, AT&T Reply at 13-14.

³⁵³ *Rural Task Force Order*, 16 FCC Rcd at 11256 para. 25, 11311-13 paras. 174-77; see Indiana Commission Comments at 3, Wisconsin Commission Comments at 3, WorldCom Comments at 13-15, AT&T Reply at 13. As state above, most, but not all, rate-of-return carriers meet the definition of "rural carrier." See *supra*, n.8.

³⁵⁴ *Rural Task Force Order*, 16 FCC Rcd at 11256 para. 25, 11311-13 paras. 174-77.

³⁵⁵ See, *e.g.*, *supra*, § I.

³⁵⁶ We note that, until July 2003 when the CCL charge is phased out entirely, the common line revenues of rate-of-return carriers will include a transitional CCL charge. See *infra*, § IV.D.2.b.

³⁵⁷ *Interstate Access Support Order*, 15 FCC Rcd at 13046 para. 201.

³⁵⁸ See, *e.g.*, *Rural Task Force Order*, 16 FCC Rcd at 11247 paras. 4-5.

support for purposes of section 254(e).³⁵⁹ There are a range of reasonable solutions, and we must select one that strikes a balance among the goals and principles of the Act.³⁶⁰ Under the circumstances, we are adopting a cautious approach which removes identifiable implicit support from the rate structure by converting the CCL charge to explicit support without affecting overall recovery of interstate loop costs, thereby safeguarding this important revenue stream for rate-of-return carriers. Based on our examination of the record, we conclude that this approach strikes a fair, reasonable balance among the policies of the 1996 Act.

131. We find that it is necessary to act cautiously in sizing the Interstate Common Line Support mechanism. Our examination of the record reveals that rate-of-return carriers generally are more dependent on their interstate access charge revenue streams and universal service support than price cap carriers and, therefore, more sensitive to disruption of those streams.³⁶¹ Although their diversity renders problematic simple assumptions about their cost characteristics, many rate-of-return carriers are small, rural carriers that serve high-cost regions. The approach that we adopt will provide these carriers with certainty and stability by ensuring that the access charge reforms we adopt do not affect this important revenue stream. In addition, in the absence of a feasible forward-looking support mechanism, we believe that a carrier's embedded interstate loop costs are a reasonable measure for calculating sufficient, but not excessive, levels of support.³⁶² Basing Interstate Common Line Support on embedded costs will ensure that carriers only recover their interstate-allocated loop costs, including a regulated rate-of-return. Accordingly, we find that the approach we adopt strikes a fair and reasonable balance among the policies of the 1996 Act.

132. Although we are mindful of arguments that a cap is necessary to ensure "sufficient," but not excessive, universal service funding, we cannot conclude that the establishment of a cap is appropriate under the circumstances. We note that our decision not to cap Interstate Common Line Support is consistent with the MAG proposal, the Rural Task Force

³⁵⁹ See *id.* at 11257-58 para. 27 (citing *Alenco Communications, Inc. v. FCC*, 201 F.3d 608, 620 (5th Cir. 2000), and *Texas Office of Public Utility Counsel v. FCC*, 183 F.3d 393, 425-26 (5th Cir. 1999)).

³⁶⁰ See *id.*; *Interstate Access Support Order*, 15 FCC Rcd at 12981-82 para. 49.

³⁶¹ See Interstate Telcom Group Comments at 4 ("Interstate Telcom has studied a representative sample of its clients, and has found that interstate access revenues and federal universal service support comprise an average of 40.56 percent of their revenue bases."); Missouri Commission Comments at 4 ("for year 2000, Missouri rural carriers received high cost support per access line ranging from \$81 to \$916. . . . Missouri carriers, on average, receiv[ed] greater revenue from subsidies than revenue generated by basic local and local network service revenue."); GVNW Consulting Comments in CC Docket No. 98-77 at 2 ("For [rate-of-return carriers], the access charge revenue stream represents, on average, twice the percentage of their total revenues as it does for an average [RBOC]"); Home Tel. Co., Inc. Comments in CC Docket No. 98-77 at 1 ("Home derives over 50% of its operating revenues from access and universal service related sources."); see also *Universal Service First Report and Order*, 12 FCC Rcd at 8936 para. 294 ("rural carriers generally serve fewer subscribers, serve more sparsely populated areas, and generally do not benefit as much from economies of scale and scope. For many rural carriers, universal service support provides a large share of the carriers' revenues, and thus, any sudden change in the support mechanisms may disproportionately affect rural carriers' operations.").

³⁶² See *Alenco v. FCC*, 201 F.3d at 619 ("excessive funding may itself violate the sufficiency requirements of the Act."). Under the Commission's rules, a rate-of-return carrier's allowed common line revenues are determined by calculating its interstate-allocated loop costs, based on embedded cost data, plus the authorized rate of return of 11.25 percent. See *infra*, § IV.E.3.; *supra*, n.28.

recommendation, and other comments in this proceeding.³⁶³ The combination of SLCs, LTS, and CCL charges currently enables rate-of-return carriers to recover all of their allowed interstate common line revenues based on their embedded costs. By limiting the support available to rate-of-return carriers, a cap on Interstate Common Line Support would cause some carriers to receive less explicit support than the implicit support they now receive through the CCL charge. A reduction in common line revenues might undermine our universal service goals by creating pressures for certain rate-of-return carriers to reduce service quality, increase local rates, or limit service offerings.³⁶⁴ Consistent with our policy of promoting investment in telecommunications services for rural America, the absence of a cap will ensure that the rate structure modifications we adopt do not affect the overall recovery of interstate loop costs by rate-of-return carriers.³⁶⁵

133. We disagree with commenters who argue that without a cap, universal service funding will grow to an unsustainable size.³⁶⁶ Unlike the MAG's proposed Rate Averaging Support, which would be tied to inflation for carriers that convert to the MAG incentive scheme,³⁶⁷ Interstate Common Line Support will be constrained by carriers' embedded costs. Interstate Common Line Support amounts will be recalculated every year, and a carrier's support level will increase only if its common line costs grow faster than its ability to recover such costs through the SLC. Thus, we believe that the approach we adopt involves significantly less risk of unconstrained fund growth than the MAG proposal.³⁶⁸ Furthermore, we can review our decision against instituting a cap at any time if universal service support levels grow more rapidly than expected.

134. We also disagree with commenters who argue for a cap on the Interstate Common Line Support mechanism based on the fact that we capped the support available to price cap carriers under the *Interstate Access Support Order*.³⁶⁹ These commenters rely on inapt

³⁶³ See *Rural Task Force Order*, 16 FCC Rcd at 11323-24 para. 202; *MAG Notice*, 16 FCC Rcd at 466 para. 18; see also Letter from John Nakahata, Esq., to Magalie Roman Salas, Federal Communications Commission, dated July 26, 2001 (proposing "Rural Consumer Choice Plan" without incorporating a cap on support for common line costs).

³⁶⁴ See 47 C.F.R. § 254(b)(1), (3), (5).

³⁶⁵ See, e.g., *Rural Task Force Order*, 16 FCC Rcd at 11264 paras. 42-43.

³⁶⁶ See Qwest Comments at 5-6, Sprint Comments at 8-9.

³⁶⁷ See *MAG Notice*, 16 FCC Rcd at 463-64 paras. 8-9, 519-21. Under the MAG plan, after a carrier initially sets its support amount based on embedded costs in a year selected at the carrier's option, support for that company would grow based on inflation and line growth, and would not be recalculated based on carrier investment.

³⁶⁸ We agree with commenters that the MAG proposal would permit a carrier to base its support on a year in which its investment was higher than average and then continue to grow its support regardless of whether its investment grew. See AT&T Comments at 2, 11, California Commission Comments at 3-4, NASUCA Comments at 22 ("The [RAS] will be increased for no other reason than the fact the GDP-PI increased. The GDP-PI has no relation to the investments required to provide telecommunications services to high cost areas."), Qwest Comments at 3-4, Sprint Comments at 8-9, WorldCom Comments at 14-15, Wisconsin Commission Comments at 10, AT&T Reply at 12-13, Verizon Reply at 3-4.

³⁶⁹ See Competitive Universal Service Coalition Comments at 9, Sprint Comments at 9, WorldCom Comments at 13-15, Excel Reply at 4-6, Verizon Reply at 3-4. We note that the United States Court of Appeals for the Fifth Circuit recently remanded the *Interstate Access Support Order* to the Commission for further analysis and explanation of its choice of \$650 million as the amount of interstate access support for price cap carriers. *Texas Office of Public Utility Counsel et al. v. FCC*, No. 00-60434 at § III.B.

comparisons to the Commission's action in the *Interstate Access Support Order*. As discussed above, the Commission consistently has taken into consideration the differences between price cap and rate-of-return carriers, as well as the specific challenges faced by small local telephone companies serving rural and high-cost areas.³⁷⁰ Price cap carriers generally are less dependent than rate-of-return carriers on interstate access charge revenues and universal service support, and better able to use various economies of scale to generate cost-saving efficiencies, thereby reducing the relative impact of any revenue reductions resulting from the cap on interstate access support for price cap carriers.³⁷¹ Because rate-of-return carriers are particularly sensitive to disruptions in their interstate revenue streams, we do not believe it would be advisable to implement a cap on Interstate Common Line Support for rate-of-return carriers at this time.

135. We also are not persuaded that we should impose a cap on the Interstate Common Line Support mechanism because rural carriers are subject to an indexed cap on high-cost loop support.³⁷² As the Commission noted in the *Rural Task Force Order*, the indexed cap on the high-cost loop support mechanism has been in place for over seven years.³⁷³ In addition, the Commission cannot rely on state action to help provide support for interstate rates in the same manner that it can for the intrastate costs supported by the Part 36 high-cost loop support mechanism, because the Commission has exclusive jurisdiction over interstate rates.³⁷⁴

136. We decline to adopt proposals by the MAG and others to extend the new explicit universal service support mechanism to support traffic sensitive costs.³⁷⁵ As discussed in detail above, these proposals are not supported by cost data in the record, and are not based on the identification of implicit subsidies within the traffic sensitive rates of rate-of-return carriers.³⁷⁶ We also reject arguments that we should provide support for traffic sensitive costs to reduce disparities between rate-of-return and price cap carriers, regardless of the actual costs of providing service for rate-of-return carriers.³⁷⁷

137. In addition, we reject the MAG's proposal to provide universal service support for special access services. As a number of commenters point out, special access services are not

³⁷⁰ See *supra*, §§ I, II.

³⁷¹ See GVNW Consulting Comments at 2-4.

³⁷² See *Rural Task Force Order*, 16 FCC Rcd at 11262-66 paras. 40-47.

³⁷³ See *Rural Task Force Order*, 16 FCC Rcd at 11263-64 para. 41. The Commission recently increased the overall size of the rural carrier portion of the high-cost loop fund as if the indexed cap and the corporate operations expense cap had not been in effect for the calendar year 2000. The rural carrier portion of the high-cost loop fund will grow by a rural growth factor equal to rural line growth plus inflation.

³⁷⁴ See *Qwest Corp. v. FCC*, 258 F.3d at 1203 ("We recognize that the FCC may not be able to implement universal service by itself, since it lacks jurisdiction over intrastate service.").

³⁷⁵ See *supra*, § IV.B.2.a. We note, however, that our actions reallocating non-traffic sensitive line port costs and portions of the TIC from traffic sensitive rate elements to the common line category will have a consequence similar to these proposals because, as part of the common line rate element, the reallocated costs may be supported by Interstate Common Line Support.

³⁷⁶ See *id.*.

³⁷⁷ See *id.*

currently included within the definition of services that are supported by the federal universal service mechanisms.³⁷⁸ The definition of universal service is a matter currently pending before the Joint Board, and any change in the definition is appropriately considered within the context of that proceeding.³⁷⁹

138. We do not adopt the MAG proposal to limit the new universal service support mechanism for the interstate loop costs of rate-of-return carriers to incumbent LECs that participate in the NECA pools.³⁸⁰ As discussed above, limiting the availability of explicit universal service support to replace implicit subsidies within the current access rate structure would prevent some rate-of-return carriers from fully participating in the benefits of access charge reform.³⁸¹ Limiting Interstate Common Line Support to members of the NECA common line pool would unduly restrict the ability of rate-of-return carriers to compete by forcing them to choose between universal service support and the freedom to set rates outside the NECA pools.³⁸²

139. We decline to modify the LTS mechanism at this time. We recognize that LTS's restriction to pooling rate-of-return carriers restricts their ability to compete by setting rates outside the NECA common line pool.³⁸³ We also recognize that, once Interstate Common Line Support is implemented beginning July 1, 2002, the two support mechanisms will serve the same function: both will support interstate common line costs. Nevertheless, we find that retaining the current LTS mechanism is warranted to ensure the stability of membership in the NECA common line pool during the transition to a more efficient common line rate structure.³⁸⁴

³⁷⁸ See AT&T Comments at 11, California Commission Comments at 3, 15-21, Competitive Universal Service Coalition Comments at 10, Verizon Comments at 4, WorldCom Reply at 2. Section 254(c) of the Act defines universal service as an "evolving level of telecommunications services that the Commission shall establish periodically[.]" 47 U.S.C. § 254(c)(1). In 1997, based on consideration of the definitional criteria set forth in section 254(c) and the Joint Board's recommendations, the Commission designated "core" services that are eligible for universal service support: single-party service; voice grade access to the public switched telephone network; Dual Tone Multifrequency signaling or its functional equivalent; access to emergency services; access to operator services; access to interexchange service; access to directory assistance; and toll limitation services for qualifying low-income consumers. *Universal Service First Report and Order*, 12 FCC Rcd at 8807-25 paras. 56-87; see 47 U.S.C. § 254(c)(1).

³⁷⁹ *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Order, 15 FCC Rcd 25257 (2000); see *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Public Notice, FCC 01-J-1 (Jt. Bd. released Aug. 21, 2001).

³⁸⁰ See *MAG Notice*, 16 FCC Rcd at 463 para. 8.

³⁸¹ See *supra*, § IV.A.2.d.; GVNW Consulting Comments at 4; see also Alaska Commission Comments at 6, AT&T Comments at 5-6, 9-10, California Commission Comments at 3, Competitive Universal Service Coalition Comments at 7-13, GCI Comments at 3-4, GSA comments at 6-7, ICORE Comments at 17, Innovative Tel. Comments at 3-4, Fred Williamson & Assoc. Comments at 5, Alaska Rural Coalition Reply at 4-6, Excel Reply at 4-5, Verizon Reply at 5.

³⁸² See AT&T Comments at 9-10, California Commission Comments at 3, ICORE Comments at 17-18; see also *infra*, § V.D.

³⁸³ 47 C.F.R. § 54.303(a).

³⁸⁴ See *Universal Service Fourth Order on Reconsideration*, 12 FCC Rcd at 363 para. 76 (declining to extend LTS to carriers that leave the NECA common line pool prior to implementation of comprehensive reform because, *inter* (continued....))

140. We believe that LTS ultimately should be merged into Interstate Common Line Support, and that participation in the NECA common line pool should not be required for receipt of interstate support. For the reasons discussed above, this measure would enhance the competitiveness of rate-of-return carriers. Although the Commission previously maintained LTS to ensure the continued usefulness of the pool as a risk-sharing mechanism,³⁸⁵ we believe that the need for this risk-sharing function will be reduced or eliminated by conversion of the CCL charge to explicit universal service support. Merging LTS into Interstate Common Line Support also would promote administrative simplicity. Once the CCL charge is phased out, the historical purpose of LTS will be eliminated,³⁸⁶ and carriers now receiving LTS would be eligible for Interstate Common Line Support to meet their common line revenue requirements. Therefore, we tentatively conclude in the attached Further Notice of Proposed Rulemaking that LTS should be merged into Interstate Common Line Support as of July 1, 2003, after which participation in the NECA common line pool will have no bearing on the amount of universal service support a carrier receives.³⁸⁷ In the Further Notice, we seek comment on this tentative conclusion.

141. Pending conclusion of the Further Notice of Proposed Rulemaking proceeding, any carrier that currently receives LTS will have LTS payments imputed to it for purposes of calculating its Interstate Common Line Support, even if the carrier subsequently foregoes LTS by leaving the NECA common line pool. We find that this measure is necessary to ensure the stability of membership in the common line pool during the phase out of the CCL charge.³⁸⁸

b. Administration and Distribution

(i) Calculation and Distribution of Interstate Common Line Support

142. *Calculating Interstate Common Line Support for Rate-of-Return Carriers.* The new Interstate Common Line Support mechanism will provide each carrier with support necessary to meet its common line revenue requirement after recovery of common line revenue from SLCs, other common line end user charges,³⁸⁹ LTS, and the transitional CCL charge, to the extent it remains. As discussed below, the new mechanism shall become effective on July 1, 2002. Beginning July 1, 2003, common line interstate access charge revenue will consist solely of revenue from SLCs, other common line end user charges, and possibly LTS, pending

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alia, such a measure “could undermine the pool’s usefulness in permitting participants to share the risk of substantial cost increases related to the CCL charge by pooling their costs and, thereby, charging an averaged CCL rate close to that charged by other carriers.”).

³⁸⁵ See *id.*

³⁸⁶ LTS was created to prevent the CCL rates of pooling carriers from rising significantly above the national average CCL rate. See *supra*, § III.B. The Commission largely has phased out the CCL charge for price cap carriers, and it will be removed from the rate structure of rate-of-return carriers as of July 1, 2003.

³⁸⁷ See *infra*, § V.D.

³⁸⁸ 47 C.F.R. § 54.303(a); see *Universal Service Fourth Order on Reconsideration*, 13 FCC Rcd at 5361-62 para. 74.

³⁸⁹ Specifically, special access surcharges pursuant to 47 C.F.R. § 69.115 and line port costs in excess of basic analog service. See *supra*, § IV.B.2.b.

resolution of the Further Notice of Proposed Rulemaking proceeding regarding LTS. A transitional CCL charge also will be included in common line revenue between July 1, 2002, and June 30, 2003. The Administrator will calculate the amount of Interstate Common Line Support available to a particular rate-of-return carrier's study area by summing, on a study area basis, the carrier's maximum allowable common line revenue from SLCs, other common line end user charges, the transitional CCL charge and LTS, and then subtracting this amount from the carrier's projected common line revenue requirement for that study area.³⁹⁰ In accordance with our rules, for purposes of calculating Interstate Common Line Support, the maximum allowable SLC rate for a given customer class will be the lesser of the SLC caps or the carrier's study area average per-line common line revenue requirement.³⁹¹

143. *Disaggregation and Targeting of Interstate Common Line Support.* Consistent with section 254 of the Act, we conclude that the plan for the geographic disaggregation and targeting of portable high-cost universal service support below the study area level recently adopted in the *Rural Task Force Order* will also apply to Interstate Common Line Support.³⁹² In the *Rural Task Force Order*, the Commission, after considering comments filed in that proceeding as well as the MAG proposal and other comments filed in this proceeding, determined that rural incumbent carriers should have the option of choosing one of three paths for the geographic disaggregation and targeting of portable high-cost universal service support at or below the study area level.³⁹³ The disaggregation and targeting of Interstate Common Line Support will encourage efficient competitive entry into the study areas of rate-of-return carriers and will ensure that support is used for its intended purpose, consistent with section 254(e) of the Act.³⁹⁴

144. Disaggregation allows incumbent carriers to target explicit universal service support to regions within a study area that cost relatively more to serve, ensuring that a competitive entrant receives the targeted support only if it also serves the high-cost region. At the same time, it prevents the competitive entrant from receiving greater support than needed to serve relatively low-cost regions, which, if permitted, would give the competitive carrier a potential price advantage over the incumbent. By providing carriers with the flexibility to choose one of three paths for the disaggregation and targeting of Interstate Common Line Support, this plan also recognizes the diverse geographic and cost characteristics of rate-of-return carriers. The plan will, for example, enable a carrier that serves only a few lines or a very small study area with little geographic variability to choose not to disaggregate, while also permitting a carrier that serves a large number of lines in a study area with both low-cost and high-cost areas to allocate support to multiple disaggregation cost zones. Application of existing

³⁹⁰ See *supra*, § IV.D.2.a. (noting that any carrier that currently receives LTS will continue to have LTS imputed to it for the purposes of computing Interstate Common Line Support, even if it foregoes LTS by leaving the NECA common line pool, pending conclusion of the LTS Further Notice of Proposed Rulemaking proceeding).

³⁹¹ See 47 C.F.R. § 69.104. If a carrier voluntarily reduces its SLC rate for any end user through SLC deaveraging or other means, that reduction will not be reflected in the calculation of support. See *supra*, § IV.A.2.c.

³⁹² See 47 U.S.C. § 254(e).

³⁹³ *Rural Task Force Order*, 16 FCC Rcd at 11302-09 paras. 144-64.

³⁹⁴ See *id.* at 11302 para. 145.

rules to the disaggregation and targeting of portable Interstate Common Line Support also will result in minimal additional administrative burdens for rate-of-return carriers.

145. The same three paths will be available for the disaggregation of Interstate Common Line Support as for other types of support pursuant to the *Rural Task Force Order*. A carrier may choose any path, but is subject to rules governing its chosen path once an election is made. Under Path One, a carrier may not disaggregate. Path One is intended to address those instances where a carrier concludes that, given the demographics, cost characteristics, and location of its study area, and the lack of a realistic prospect of competitive entry, disaggregation is not economically rational.³⁹⁵ Under Path Two, a carrier must disaggregate in accordance with a plan approved by the appropriate regulatory authority.³⁹⁶ In recognition of the important role of state commissions and other appropriate regulatory authorities in facilitating competition, the Commission determined that there should be no constraints on disaggregation and targeting plans under Path Two.³⁹⁷ Under Path Three, a carrier must self-certify to the relevant regulatory authority either a disaggregation plan of up to two cost zones per wire center or a disaggregation plan that complies with a prior regulatory determination.³⁹⁸ Disaggregation zones established under Path Three must be reasonably related to the cost of providing service for each disaggregation zone within each disaggregation category of support. Self-certification is meant to reduce administrative burdens on carriers and states, and facilitate the rapid implementation of disaggregation plans. Carriers that fail to select one of the three disaggregation paths within the allotted time—originally 270 days from the effective date of rule adopted in the *Rural Task Force Order*, but extended below—will not be permitted to disaggregate and target support unless ordered to do so by a state commission or other appropriate regulatory authority either on its own motion or in response to a request from an interested party.³⁹⁹ Likewise, a carrier's choice of disaggregation paths shall remain in place for four years, unless a state commission or other appropriate regulatory authority orders disaggregation and targeting of support in a different manner.⁴⁰⁰

146. Rate-of-return carriers will be required to select identical disaggregation zones for all forms of high-cost universal service support, with the exception of forward-looking intrastate high-cost support received by non-rural carriers that are also rate-of-return carriers.⁴⁰¹ For example, if a rural rate-of-return carrier self-certifies two cost zones per wire center under Path Three, it will be required to disaggregate all forms of high-cost universal service support,

³⁹⁵ *Id.* at 11303-04 paras. 148-49.

³⁹⁶ *Id.* at 11304 para. 150.

³⁹⁷ Under Path 2, a carrier could, for example, request regulatory approval for a plan to disaggregate support to more than two cost zones per wire center that correspond with existing UNE zones. *Id.* at 11304 para. 150 (“[Under Path Two], a disaggregation and targeting method can be tailored with precision, subject to state approval, to the cost and geographic characteristics of the carrier and the competitive and regulatory environment in which it operates.”).

³⁹⁸ *Id.* at 11304 para. 151.

³⁹⁹ *Id.* at 11303 para. 147.

⁴⁰⁰ *Id.* at 11305-06 paras. 153-55.

⁴⁰¹ Forward-looking intrastate high-cost support received by non-rural rate-of-return carriers is not subject to disaggregation pursuant to section 54.315.

including high-cost loop support, LSS, LTS, and Interstate Common Line Support, to the same two cost zones per wire center. Permitting carriers to develop and implement only one disaggregation plan for all types of high-cost universal service support further minimizes the administrative burdens associated with Interstate Common Line Support for rate-of-return carriers, relevant regulatory authorities, and the Administrator.

147. Carriers must allocate the same ratio of high-cost loop support under Part 36, LTS, and Interstate Common Line Support to each disaggregation zone, but may allocate a different ratio for LSS. A carrier's disaggregation plan must be based on cost.⁴⁰² Because the high-cost loop, LTS, and Interstate Common Line Support mechanisms each support loop costs and therefore share similar cost characteristics, we see no reason why such support should be allocated differently in different disaggregation zones. On the other hand, a carrier's local switching cost characteristics may differ from its loop cost characteristics in different disaggregation zones. Therefore, to the extent that the cost characteristics of providing loop and switching service in disaggregation zones differ, carriers will be permitted to allocate different ratios of high-cost support between disaggregation zones for LSS than for Interstate Common Line Support, LTS, and intrastate high-cost loop support.⁴⁰³ This is consistent with section 254(e) of the Act and the *Rural Task Force Order*, and will enable carriers to further target support to high-cost areas, thereby encouraging efficient competitive entry into study areas in which rate-of-return carriers operate.

148. We note that our rules for the disaggregation and targeting of portable Interstate Common Line Support and LTS will apply to both rural and non-rural rate-of-return carriers. Although the vast majority of rate-of-return carriers are rural telephone companies, as that term is defined in section 51.5 of the Commission's rules,⁴⁰⁴ a very small number of rate-of-return carriers are non-rural carriers.⁴⁰⁵ Non-rural rate-of-return carriers will be required to adopt a disaggregation and targeting path only for their receipt of Interstate Common Line Support and LTS. Non-rural intrastate high-cost support, including forward-looking high-cost support and interim hold-harmless support, will continue to be targeted to high-cost wire centers, consistent with our rules for targeting such support to high-cost wire centers.⁴⁰⁶

⁴⁰² See 47 C.F.R. § 54.315(d)(2)(ii).

⁴⁰³ Once ratios are allocated, however, they cannot be reallocated for at least four years, absent an order from the relevant state regulatory agency changing the ratios. 47 C.F.R. § 54.315.

⁴⁰⁴ Section 51.5 of the Commission's rules uses the definition of a rural telephone company set forth in section 153(37) of the Act. 47 U.S.C. § 153(37). Under this definition, rural telephone companies are local exchange carriers that either serve study areas with fewer than 100,000 access lines or meet one of three other criteria. We note that, "[a]lthough the Commission uses the rural telephone company definition to distinguish between rural and non-rural carriers for purposes of calculating universal service support, there is no statutory requirement that it do so." *Federal-State Joint Board on Universal Service*, CC Docket No. 96-45, Tenth Report and Order, 14 FCC Rcd 20156, 20358 para. 458 (1999).

⁴⁰⁵ Non-rural carriers are those that do not satisfy one of the criteria in section 153(37) of the Act. Non-rural rate-of-return carriers include Alaska Communications Systems -- ATU, Alltel Ohio, Inc., North State Tel. Co. in North Carolina, PRTC Central of Puerto Rico, Puerto Rico Tel. Co., and Roseville Tel. Co. in California.

⁴⁰⁶ See 47 C.F.R. §§ 54.309, 54.311; see also *Universal Service Ninth Report and Order*, 14 FCC Rcd at 20471 para. 70, 20476 para. 82. Consistent with the states' primary role in ensuring reasonable comparability of rates within

(continued....)

149. Consistent with the *Rural Task Force Order*, we also adopt general requirements that will govern all disaggregation plans.⁴⁰⁷ We require that an incumbent carrier's total amount of disaggregated support for a study area equal the total support available in the study area on an aggregated basis. We also require that relative per-line support relationships between disaggregation zones remain fixed over time (except as changes are allowed under our rules) and that such relationships be made publicly available. Further, a competitive eligible telecommunications carrier's per-line support amounts will be based on the incumbent carrier's then-current total support levels, lines, disaggregated support relationships, and customer classes. Finally, the per-line support amounts available to a competitive eligible telecommunications carrier for each zone will be recalculated whenever an incumbent's total annual support or line counts, as indicated by its filings, have changed. As discussed in the *Rural Task Force Order*, these general requirements will ensure that the disaggregation and targeting of support is accomplished in a manner that is consistent with the universal service principles of specificity, predictability, and competitive neutrality.⁴⁰⁸

150. In order to provide rate-of-return carriers with sufficient time to select a disaggregation path, we amend section 54.315 of the Commission's rules to extend by 60 days the period within which carriers will be required to select a disaggregation path to the extent that they are eligible to receive intrastate high-cost loop support, LSS, LTS, or Interstate Common Line Support.⁴⁰⁹ Without this extension, carriers would be required to select a disaggregation path for the receipt of high-cost universal service support by March 18, 2002.⁴¹⁰ Instead, we extend until May 15, 2002, the date by which carriers will be required to select a disaggregation path for high-cost loop, LTS, LSS, and Interstate Common Line Support mechanisms.⁴¹¹ Because the cost characteristics associated with Interstate Common Line Support, LTS, and intrastate high-cost loop support are the same, the disaggregation of Interstate Common Line Support will result in minimal additional administrative obligations for rural rate-of-return carriers. Therefore, we do not believe it is necessary to provide rural rate-of-return carriers with

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their borders, the Commission has recognized that some states may wish to have federal non-rural high-cost support targeted to UNE cost zones. Sections 54.309 and 54.311 of our rules permit a state to file a petition for waiver of the Commission's targeting rules, requesting to target federal forward-looking high-cost support or interim hold-harmless support to an area different than a wire center. 47 C.F.R. §§ 54.309(c); 54.311(c); see, e.g., *Wyoming Public Service Commission Petition for Waiver of Targeting Requirements Found in Sections 54.309 and 54.311 of the Commission's Rules*, CC Docket No. 96-45, DA 01-612 (Com. Car. Bur. rel. Mar. 9, 2001).

⁴⁰⁷ See *Rural Task Force Order*, 16 FCC Rcd at 11307 para. 159.

⁴⁰⁸ See *id.* at 11307 para. 160 (citing 47 U.S.C. § 254(b)(5); *Universal Service First Report and Order*, 12 FCC Rcd at 8801-03 paras. 46-51).

⁴⁰⁹ As discussed above, we note that non-rural rate-of-return carriers will not be required to choose disaggregation paths for forward-looking non-rural high-cost universal service support.

⁴¹⁰ See 47 C.F.R. § 54.315(a) (requiring carriers to select a disaggregation plan within 270 days of the effective date of the rule).

⁴¹¹ The May 15, 2002, deadline is the date by which carriers must select a disaggregation path. A carrier electing Path Two or Path Three must, by that date, file with the relevant state regulatory authority its proposed disaggregation plan or its self-certified disaggregation plan. State approval of a carrier's proposed disaggregation plan pursuant to Path Two is not required by that date, but the disaggregation plan cannot go into effect until approval is received.

more than 60 additional days to include Interstate Common Line Support in their disaggregation plans. This extended deadline also will provide non-rural rate-of-return carriers with sufficient time to select a disaggregation path for purposes of receiving Interstate Common Line Support.

151. *Calculation of Portable Interstate Common Line Support by Customer Class.* We also adopt rules that will target Interstate Common Line Support by customer class to competitive eligible telecommunications carriers located in rate-of-return carrier study areas. In accordance with section 54.307 of our rules, per-loop equivalents of Interstate Common Line Support will be portable to competitive eligible telecommunications carriers.⁴¹² According to the principle of competitive neutrality adopted by the Commission and recommended by the Joint Board, universal service support mechanisms and rules should neither unfairly advantage nor disadvantage one provider over another.⁴¹³ Consistent with this principle, the Commission implemented the universal service principles in section 254 of the Act to ensure that universal service support is "portable," in essence, available to all competing eligible telecommunications carriers.⁴¹⁴

152. As discussed above, we adopt different SLC caps for residential and single-line business lines and for multi-line business lines due to affordability concerns, even though it will typically cost a carrier the same amount, on average, to provision lines to each class of customer.⁴¹⁵ Although the formula for calculating Interstate Common Line Support to be received by an incumbent carrier does not explicitly acknowledge the relationship between customer class and support, the lower residential and single-line business SLC cap effectively means that carriers require more support for those lines than for multi-line business lines to meet their common line revenue requirement. If competitive eligible telecommunications carriers were to receive portable Interstate Common Line Support on a per-line basis without regard to customer class, they would receive less support for residential and single-line business lines than the incumbent, while receiving comparatively greater support for multi-line business lines. We conclude that these differences would create inappropriate incentives for competitive eligible telecommunications carriers to serve each class of customer. Accordingly, we adopt rules for the targeting of portable Interstate Common Line support within disaggregation zones that are consistent with rules adopted in the *Interstate Access Support Order* regarding the portability of interstate support for price cap carriers.⁴¹⁶

153. In order to ensure that competitive carriers have the proper incentives to serve all customer classes in a rate-of-return carrier's study area, the portable per-line Interstate Common Line Support received by competitive eligible telecommunications carriers will reflect the varying support required to serve each customer class. Once Interstate Common Line Support amounts have been calculated for each eligible rate-of-return carrier's study area, and, if applicable, each disaggregation zone, the Administrator will identify the per-line support

⁴¹² See 47 C.F.R. § 54.307.

⁴¹³ See *Universal Service First Report and Order*, 12 FCC Rcd at 8801-02 paras. 46-48, 8932-34 paras. 286-90.

⁴¹⁴ See 47 C.F.R. § 54.307; see also *Universal Service First Report and Order*, 12 FCC Rcd at 8932 para. 287.

⁴¹⁵ See *supra*, § IV.A.2.

⁴¹⁶ 47 C.F.R. § 54.807.

available to a competitive eligible telecommunications carrier for each customer class served within each study area. Per-line Interstate Common Line Support available to competitive eligible telecommunications carriers will be based on the extent to which the rate-of-return carrier's average per-line projected interstate common line revenues requirement exceeds the SLC caps for each customer class.

154. Within a particular disaggregation zone or undisaggregated study area, portable support will be targeted first to residential and single-line business lines – up to the difference between the residential and multi-line business SLC caps – before allocating the remaining support equally between the customer classes. For example, if Interstate Common Line Support available to a given disaggregation zone is greater than \$2.70 (the difference between a capped residential and single-line business SLC of \$6.50 and a capped multi-line business SLC of \$9.20) multiplied by the rate-of-return carrier's total number of residential and single-line business lines in that disaggregation zone, \$2.70 in portable per-line Interstate Common Line Support will be targeted first to the residential and single-line business lines. The remaining portable Interstate Common Line Support then will be allocated equally on a per-line basis to all of the rate-of-return carrier's lines (*i.e.*, residential, single-line business, and multi-line business lines) in the disaggregation zone. This measure will maintain the difference in Interstate Common Line Support values for each customer class.

155. *Transferred Interstate Common Line Support.* If a rate-of-return carrier acquires telephone exchanges from another rate-of-return carrier, we conclude that the acquiring carrier may become eligible to receive additional Interstate Common Line Support for the acquired exchanges.⁴¹⁷ This is consistent with rules adopted in the *Interstate Access Support Order* regarding the transfer of interstate access universal service support between price cap carriers.⁴¹⁸ The Administrator shall adjust the Interstate Common Line Support that each carrier receives based on data reported to the Administrator through the filings described below. Interstate Common Line Support for both carriers will be adjusted based on the adjusted line counts contained in the next applicable filing and the per-line support amount associated with those lines. Interstate Common Line Support for the transferred exchanges will continue to be distributed in this manner until it is recalculated in the next funding year and will be subject to a true up based on actual cost data.

156. If a rate-of-return carrier acquires telephone exchanges from an entity other than a rate-of-return carrier, the acquiring rate-of-return carrier may be eligible to receive Interstate Common Line Support for the acquired exchanges. The acquiring rate-of-return carrier will be permitted to adjust its line counts in the next quarterly report to the Administrator and will receive support based on the per-line support available to the acquiring carrier's existing lines at the time of the transfer until the carrier's Interstate Common Line Support is recalculated for the next funding year and subject to true up based on actual cost data. If the acquiring carrier does not serve any lines in the state prior to the transaction, it will be permitted to submit a projected interstate common line revenue requirement for the remainder of the funding year on the date for

⁴¹⁷ In adopting these rules today, we do not alter the Commission's existing rules governing the sale or acquisition of lines by carriers or the definition of study area contained in Part 36 of our rules.

⁴¹⁸ See *Interstate Access Support Order*, 15 FCC Rcd at 13060 para. 225; 47 C.F.R. § 54.801(d).

filing the next quarterly line count report with the Administrator following consummation of the transaction. The acquiring carrier will receive Interstate Common Line Support based on the projected revenue requirement, subject to true up based on actual data. A price cap carrier acquiring exchanges from a rate-of-return carrier will not be eligible to receive Interstate Common Line Support for those exchanges.

157. We do not believe that the same concerns that justify the restrictions on the transfer of intrastate high-cost universal service support in section 54.305 of our rules are present here.⁴¹⁹ Section 54.305 of our rules provides that a carrier acquiring exchanges from an unaffiliated carrier shall receive the same per-line levels of intrastate high-cost universal service support for which the acquired exchanges were eligible prior to the transfer. As a result of implementation of different support mechanisms for rural and non-rural carriers, the Commission adopted section 54.305 as a temporary measure to prevent a potential increase in the acquiring carrier's universal service support payments from unduly influencing its decision to acquire exchanges.⁴²⁰ Because Interstate Common Line Support for rate-of-return carriers and interstate access universal service support for price cap carriers will both be based at least in part on an individual carrier's embedded costs, those support mechanisms do not raise a similar concern.⁴²¹ We therefore conclude that section 54.305 does not apply to the transfer of Interstate Common Line Support. Section 54.305 of our rules will continue to apply to the transfer of high-cost loop support under Part 36, non-rural interim hold-harmless support, forward-looking support for non-rural carriers, LTS, and LSS.

(ii) Implementation of Interstate Common Line Support

158. *Schedule for Phasing in Interstate Common Line Support.* As described above, the multi-line business SLC cap will be increased to \$9.20 on January 1, 2002, while the residential and single-line business SLC cap will be increased gradually to \$5.00 on January 1, 2002, and, consistent with increases to price cap carriers' SLC caps, to \$6.00 on July 1, 2002, and to \$6.50 on July 1, 2003.⁴²² We conclude that there may be insufficient time, however, for the Administrator and eligible telecommunications carriers to take necessary actions to effectively implement the new Interstate Common Line Support mechanism by January 1, 2002. In an abundance of caution, we therefore order that the new mechanism shall become effective on July 1, 2002, and the CCL charge will remain in effect as it is now until that time. We will retain a transitional CCL charge during the period of graduated increases in the residential SLC cap.⁴²³ A transitional CCL charge therefore will remain in place between July 1, 2002, and July 1, 2003. If, as a result of cost studies, residential and single-line business SLC caps do not rise in accordance with the schedule, the CCL charge will be phased out on July 1, 2003, and the new

⁴¹⁹ See 47 C.F.R. § 54.305.

⁴²⁰ See *Universal Service First Report and Order*, 12 FCC Rcd at 8942-43 para. 308.

⁴²¹ See *Interstate Access Support Order*, 15 FCC Rcd at 13043 paras. 195-96.

⁴²² See *supra*, § IV.A.2.a.

⁴²³ See *id.* at § IV.A.2.d.

Interstate Common Line Support mechanism will provide support for any common line revenues not recovered through the SLCs, other common line end user charges and LTS.⁴²⁴

159. *Fund Administration.* We direct the Universal Service Administrative Company (USAC), as Administrator of the federal universal service support mechanisms, to administer the Interstate Common Line Support mechanism. Interstate Common Line Support shall be administered by USAC's High Cost and Low Income Division under the direction of the High Cost and Low Income Committee of the USAC Board. USAC shall keep separate accounts for the amounts of money collected and disbursed for Interstate Common Line Support, and USAC shall account for and recover the administrative expenses that it incurs in connection with administering the Interstate Common Line Support mechanism. USAC also shall include the projected demand and expenses associated with Interstate Common Line Support in the aggregate projections for all of the high-cost support mechanisms that it submits to the Commission on a quarterly basis.

160. *Filing Requirements.* In order for the Administrator to effectively and efficiently implement the Interstate Common Line Support mechanism, we conclude that the filing requirements described below are necessary. We recognize that many rate-of-return carriers are small, rural carriers that are particularly burdened by additional reporting requirements. Accordingly, we intend to limit as much as possible the administrative burdens associated with the new Interstate Common Line Support mechanism, while promoting accurate and efficient distribution of support. Consistent with the Paperwork Reduction Act, we intend to require rate-of-return carriers to file the minimum amount of information necessary for the proper functioning of the Interstate Common Line Support mechanism.⁴²⁵ In addition, consistent with the Regulatory Flexibility Act, we adopt alternative measures that will enable smaller rate-of-return carriers to file cost data less frequently.⁴²⁶ At the same time, we also seek not to disrupt NECA's current procedures for the submission of data by members of the common line pool. As we note below, the burdens associated with these new filing requirements are in many cases mitigated because rate-of-return carriers already prepare similar filings pursuant to other Commission rules or as a result of their membership in the NECA common line pool.

161. We discuss below in detail the filing requirements necessary to permit the Administrator to effectively implement Interstate Common Line Support. First, we discuss the annual filing of projected revenue requirements by rate-of-return carriers. Second, we discuss the annual and/or quarterly filing of data to permit the Administrator to "true up" a rate-of-return carrier's Interstate Common Line Support based on actual costs. Third, we discuss the annual and/or quarterly filing of line counts by rate-of-return carriers and competitive eligible telecommunications carriers. Fourth, we address the requirement that rate-of-return carriers choosing to disaggregate their universal service support must file maps describing the boundaries of disaggregation zones in order to permit the Administrator and competitive carriers to

⁴²⁴ See *id.* at § IV.A.2.a.

⁴²⁵ See *Paperwork Reduction Act of 1995*, Pub. L. No. 104-13 (1995).

⁴²⁶ See 5 U.S.C. § 601, *et seq.*

determine how support will be targeted.⁴²⁷ Finally, we discuss the annual filing that carriers will be required to submit certifying that they will comply with section 254(e)'s requirement that universal service funds will be used only to support universal service.

162. *Projected Revenue Requirements.* In order to enable the Administrator to calculate per-line amounts of Interstate Common Line Support, rate-of-return carriers other than average schedule companies shall report to the Administrator their projected common line revenue requirement for each study area in which they operate.⁴²⁸ The Administrator shall determine the data that will be included in projected common line revenue requirement filings. We anticipate that the Administrator will require rate-of-return carriers to submit the same carrier common line cost data currently submitted to the Commission in Tariff Review Plans that incumbent LECs and/or NECA file in support of annual revisions to their access service tariffs.⁴²⁹ Consistent with their average schedule status, average schedule companies will not be required to submit common line revenue requirements, but instead will be required to submit information necessary in order for the Administrator to calculate common line revenue requirements for average schedule companies. In accordance with section 54.705 of our rules, the Administrator shall have authority to perform audits of beneficiaries of the new Interstate Common Line Support mechanism to ensure the accuracy of data submitted.⁴³⁰ A competitive eligible telecommunications carrier need not file a projected revenue requirement because it will receive per-line Interstate Common Line Support based on the incumbent rate-of-return carrier's support.⁴³¹

163. In order to enable the Administrator to begin distributing Interstate Common Line Support to carriers on July 1, 2002, we will require rate-of-return carriers to submit to the Administrator projected common line revenue requirements for July 1, 2002, to June 30, 2003, by March 31, 2002. Consistent with carrier access tariff filing obligations and NECA's current procedures for the filing of revenue requirements by members of the common line pool, we will permit carriers to submit to the Administrator corrections of their projected common line revenue requirements until April 10, 2002.⁴³² As described below, after April 10, 2002, any corrections to projected common line revenue requirements shall be made in the form of true ups using actual cost data. Rate-of-return carriers will be required to submit to the Administrator projected common line revenue requirements for subsequent years on the same schedule.

⁴²⁷ As noted below, this filing requirement currently exists for other universal service support mechanisms. In this Order, we merely extend the requirement to apply to Interstate Common Line Support.

⁴²⁸ Certain rate-of-return carriers that are members of the NECA common line pool may rely on NECA to develop and file their projected common line revenue requirements.

⁴²⁹ See *Material to be Filed in Support of 2001 Annual Access Tariff Filings, Tariff Review Plans*, 16 FCC Rcd 10408, 10412-14 paras. 18-26, 10512-48 (Comp. Pric. Div. 2001); see also National Exchange Carrier Association, Inc., Access Service Tariff F.C.C. No. 5, Transmittal No. 901, Volumes 2, Section 2, at 4-5, issued Jun. 18, 2001.

⁴³⁰ See 47 C.F.R. § 54.705.

⁴³¹ See *id.* at § 54.307.

⁴³² In order for lawful access service tariffs to be effective by the scheduled effective date of July 1st, carriers must file their access service tariffs by June 15, 2001. See *id.* at §§ 61.58, 69.3.

164. We conclude that the filing of this data with the Administrator on this schedule is necessary to permit the Administrator to administer the Interstate Common Line Support mechanism in a predictable manner without significant lag in the distribution of support to rate-of-return carriers. Without the use of projected data, the Administrator would need to wait until embedded cost data was available—possibly for a period of more than a year—to begin distributing support under the mechanism. Moreover, we conclude that the projected data filing should mirror as closely as possible the current data collection practiced by NECA for its tariff filing on behalf of its common line pool members.⁴³³ Because Interstate Common Line Support replaces revenue currently collected through the carriers' tariffed CCL charge, using similar data provided on a similar schedule ensures that Interstate Common Line Support will effectively replace lost CCL charge revenues. Following this filing schedule also mitigates the administrative burden associated with the filing, because many rate-of-return carriers provide similar data to NECA at the same general time.⁴³⁴ Although we considered a filing process in which the Administrator would utilize NECA's data collections, time constraints associated with the July 1 commencement of the funding year render such a schedule impracticable.⁴³⁵

165. We also realize that requiring rate-of-return carriers to file projected common line revenue requirements on an annual basis will impose additional obligations on a small number of rate-of-return carriers. Specifically, rate-of-return carriers that are not part of the NECA common line pool currently are required to file their access tariffs and supporting documentation once every two years.⁴³⁶ The vast majority of rate-of-return carriers are members of the NECA common line pool. Although these new filing requirements may result in certain rate-of-return carriers determining their common line revenue requirement on a more frequent basis, such projections will be for one year, as opposed to two years. Therefore, the individual filings will be less burdensome. Consistent with section 254 of the Act, we also conclude that the annual filing of projected common line revenue requirements will ensure that total amounts of the Interstate Common Line Support remain more predictable.⁴³⁷ Annual, as opposed to biennial,

⁴³³ The vast majority of rate-of-return carriers currently are members of the NECA common line pool. Therefore, most rate-of-return carriers currently submit common line cost data information to NECA. Members of the common line pool file such data in accordance with procedures developed by NECA. *See id.* at § 69.605. In order to enable NECA to develop rates for the NECA common line tariff, on an annual basis, members of the common line pool currently submit estimated actual common line costs for the prior year and forecasted common line cost information for the next two years. We note that average schedule companies do not submit cost data to NECA. *See id.* at § 69.606. Instead, the average schedule formulas are used to develop common line revenue requirements and rates for average schedule companies.

⁴³⁴ NECA collects this data for the purpose of preparing its annual tariff filings. In accordance with our rules, NECA develops its data collections independently. *See id.* at §§ 69.605, 69.606. Rate-of-return carriers that are not members of the common line pool submit forecasted common line costs directly to the Commission as part of their tariff filings. *See id.* at §§ 61.38, 61.39.

⁴³⁵ We understand that, although projected common line costs are filed by individual carriers with NECA in March or April, carriers do not finalize their reports until early June, in time for NECA to prepare and file its annual interstate access service tariff with the Commission. In order to enable USAC to calculate and begin distributing Interstate Common Line support on July 1 of each year, USAC will need the carriers' projected interstate common line revenue requirements by March 31 of each year.

⁴³⁶ *See id.* §§ 61.38, 61.39, 69.3. NECA, on the other hand, files access tariffs on behalf of members of the common line pool on an annual basis.

⁴³⁷ 47 U.S.C. § 254(b)(5).

filing of projected revenue requirements also will reduce the likelihood of significant adjustments to individual carrier support amounts to reflect actual costs.

166. *True Ups.* We adopt measures to enable the Administrator to “true up” or make adjustments to a carrier’s per-line Interstate Common Line Support amounts to account for differences between projected and actual cost data. We note that, in the *Interstate Access Support Order*, the Commission adopted procedures for truing up the access rates of price cap carriers that choose not to participate in the CALLS plan to reflect the results of a forward-looking economic cost study.⁴³⁸ NECA also currently performs true ups to individual carrier pool settlements.⁴³⁹ We anticipate that such true ups also will be necessary to ensure that carriers receive per-line amounts of Interstate Common Line Support that accurately reflect actual costs. True ups also will enable carriers that experience unforeseen costs to file actual cost data and receive increased per-line amounts of Interstate Common Line Support. Additionally, true ups will serve to minimize incentives for carriers to overstate projected interstate common line revenue requirements. Through the true-up process, such carriers eventually will receive support that reflects their actual costs.

167. On July 31 of each year, rate-of-return carriers will be required to submit actual interstate common line cost data to the Administrator for the preceding calendar year. This coincides with the date that carriers currently submit similar cost data to NECA under section 36.611 of our rules.⁴⁴⁰ The first date for filing actual cost data shall be July 31, 2003. The Administrator shall adjust a rate-of-return carrier’s monthly per-line Interstate Common Line Support in the following calendar year (*i.e.*, January 1, 2004 through December 31, 2004) to the extent of any difference between the carrier’s projected common line revenue requirement and its actual cost data. Because the July 1, 2003, filing will only include cost data for the first six months that Interstate Common Line Support is available (July 1, 2002, through December 31, 2002), trued-up support amounts distributed in the calendar year 2004 will be based on a prorated share of the 2002 annual cost data (*i.e.*, 50 percent of the 2002 actual costs will be attributed to the final six months of 2002).⁴⁴¹ Trued-up support amounts distributed in subsequent calendar years will be based on complete funding year cost data. We note that

⁴³⁸ See *Interstate Access Support Order*, 15 FCC Rcd at 12984-85 paras. 57-62.

⁴³⁹ For purposes of pooling and settlements, members of the common line pool also submit abbreviated common line cost data and revenues on a monthly basis. Average schedule companies also submit line count data and exchange information on a monthly basis. Members of the common line pool have the option of updating such data (for example, to correct errors or omissions) for purposes of “truing up” or adjusting common line pooling settlements that occur on a monthly basis. Members of the common line pool also submit actual cost data either on a quarterly or annual basis for purposes of truing up settlement amounts. Quarterly cost data is submitted between four to six months after the close of each calendar quarter and annual cost data is submitted between seven to twelve months following the close of the calendar year. Average schedule companies do not submit cost studies for the true-up process. See *supra*, n. 433.

⁴⁴⁰ See 47 C.F.R. § 36.611. Carriers make this filing to NECA pursuant to NECA’s role as Administrator of high-cost loop support under Part 36 of our rules. The embedded cost data that will be filed by rate-of-return carriers pursuant to the filing requirements adopted in this Order is defined under Part 69 of our rules and is different from, though similar to, the loop cost data currently submitted to NECA pursuant to Part 36 of our rules.

⁴⁴¹ Dividing the 2002 costs in this manner avoids the need for carriers to meet any additional reporting burden associated with determining actual costs on a monthly basis, rather than an annual basis.

competitive eligible telecommunications carriers' per-line support amounts will also be subject to true ups to the extent that the incumbent rate-of-return carrier's support amounts are subject to true up, consistent with section 54.307 of the Commission's rules.⁴⁴²

168. In order to provide rate-of-return carriers with opportunities to true up support amounts on a more frequent basis, we will permit carriers to file updated cost data with the Administrator on a quarterly basis. Quarterly true ups will enable carriers that experience unforeseen costs to qualify for increased Interstate Common Line Support amounts. Quarterly true ups also will reduce risks associated with receiving Interstate Common Line Support based on a projected common line revenue requirement. Carriers wishing to submit cost data on a quarterly basis will file such data in accordance with the schedule provided in section 36.612 of the rules.⁴⁴³

169. We conclude that these filings are appropriate in order to prevent the over-recovery of revenues by rate-of-return carriers as a result of the distribution of Interstate Common Line Support based on projected costs, and to ensure that rate-of-return carriers that experience costs that are higher than projected are able to meet their revenue requirements. We also note that the existence of true-up processes for members of the NECA common line pool, and of filing requirements for similar data on the same schedule pursuant to Part 36 of our rules, mitigate the administrative burden associated with this filing.

170. *Line Counts.* Consistent with rules adopted in the *Rural Task Force Order*, rate-of-return carriers will file their line counts with the Administrator, by disaggregation zone and customer class, in accordance with the schedule in sections 36.611 and 36.612 of our rules.⁴⁴⁴ Line count data for rural rate-of-return carrier study areas in which a competitive eligible telecommunications carrier has not begun providing service will be filed on an annual basis.⁴⁴⁵ Line count data will be filed on a regular quarterly basis upon competitive entry in rural rate-of-return carrier study areas.⁴⁴⁶ By only requiring rural rate-of-return carriers to file quarterly line count data upon competitive entry, we avoid subjecting rural carriers to additional administrative obligations. We note that non-rural rate-of-return carriers currently are required to file line count data on a quarterly basis regardless of whether a competitor is present and that requirement will not change.⁴⁴⁷ These reporting requirements merely alter existing Commission filing

⁴⁴² See 47 C.F.R. § 54.307.

⁴⁴³ See *id.* at § 36.612. Like the annual filing requirement, for the purposes of this support mechanism, costs reported in quarterly filings will be attributed to universal service funding years on a prorated basis.

⁴⁴⁴ See *id.* at §§ 36.611, 36.612.

⁴⁴⁵ See *Rural Task Force Order*, 16 FCC Rcd at 11298-99 paras. 132-135. Rural rate-of-return study areas are those study areas in which a rate-of-return incumbent local exchange carrier that satisfies the definition of rural telephone company in section 153(37) of the Act operates. See 47 U.S.C. § 153(37).

⁴⁴⁶ See *Rural Task Force Order*, 16 FCC Rcd at 11298 paras. 132-135; *Interstate Access Support Order*, 15 FCC Rcd at 13060 para. 227.

⁴⁴⁷ See *Universal Service Ninth Report and Order*, 14 FCC Rcd at 20480-81 para. 92 (mandating quarterly reporting for carriers serving non-rural study areas "[t]o ensure that [universal service support is] based on data from the same reporting periods, and to ensure equitable, non-discriminatory, and competitively neutral treatment of incumbent LECs and competitive eligible telecommunications carriers.").

requirements so that lines will be reported by customer class.⁴⁴⁸ Although we acknowledge this creates an additional administrative burden on carriers, we find that the burden is justified by the importance of ensuring that Interstate Common Line Support is portable on an equitable, non-discriminatory, and competitively neutral basis, as discussed above.

171. In order to enable the Administrator to accurately calculate per-line Interstate Common Line Support amounts and begin distributing support on July 1, 2002, the first date for filing line count data for all rate-of-return carriers and competitive eligible telecommunications carriers operating in study areas served by rate-of-return carriers shall be March 31, 2002, for support distributed in the third calendar quarter. Thereafter, the annual filing date for line-count data in study areas without competitive entry shall be on July 31 of each year. We clarify that annual line count data filed on July 31 will serve as the basis for support distributed beginning in the fourth calendar quarter. For a rate-of-return carrier serving a study area without competitive entry, the annual line count data will serve as the basis for Interstate Common Line Support distributed through the third quarter of the following calendar year. Line count data that is filed on a quarterly basis will be used to calculate support for the second calendar quarter after the data is filed.⁴⁴⁹

172. In order for the Administrator to calculate appropriate levels of support, line counts must be assigned to disaggregation zones if disaggregation zones have been established within a study area. In addition, the line count information must show residential/single-line business line counts separately from multi-line business line counts. This requirement is consistent with rules adopted in the *Interstate Access Support Order*.⁴⁵⁰ The residential/single-line business lines reported may include single and non-primary residential lines, single-line business lines, basic rate interface (BRI) integrated services digital network (ISDN) service, and other related residence class lines. Similarly, the multi-line business class lines reported may include multi-line business, Centrex, primary rate interface (PRI) ISDN and other related business class lines.⁴⁵¹ We acknowledge that requiring rate-of-return carriers to file line count data by customer class will create additional reporting requirements; however, such additional reporting requirements are necessary to enable the Administrator to calculate appropriate levels of Interstate Common Line Support for rate-of-return carriers and their competitors.

173. Competitive eligible telecommunications carriers will file their line counts with USAC, by disaggregation zone and customer class on a quarterly basis, in accordance with the schedule in section 54.307 of our rules.⁴⁵² This filing schedule will permit the Administrator to provide support to competitive eligible telecommunications carriers based on the most accurate data feasible, and will not impose significant new filing burdens on competitive carriers. In

⁴⁴⁸ The Commission's rules currently require that a rural carrier file line counts by disaggregation zone. 47 C.F.R. §§ 36.611, 36.612.

⁴⁴⁹ For example, line count data filed on March 31 will serve as the basis for Interstate Common Line Support distributed in the third calendar quarter (beginning July 1).

⁴⁵⁰ See *Interstate Access Support Order*, 15 FCC Rcd at 13060 para. 227; 47 C.F.R. § 54.802(a).

⁴⁵¹ Such lines include all business class lines assessed the end user common line charge pursuant to 47 C.F.R. § 69.104.

⁴⁵² See 47 C.F.R. § 54.307.

order to create a common filing schedule for competitive eligible telecommunications carriers and incumbent LECs, we make adjustments to section 54.307, which governs the schedule under which competitive eligible telecommunications carriers file their line count data.⁴⁵³ Specifically, we make adjustments to dates for counting lines so that they are consistent with dates included in sections 36.611 and 36.612 of our rules for the filing of line counts by incumbent LECs.

174. *Disaggregation Plans.* Consistent with the rules adopted in the *Rural Task Force Order*, to ensure the portability and predictability of support, we also will require rate-of-return carriers that choose to disaggregate universal service support to submit maps to the Administrator in which the boundaries of the designated disaggregation zones are clearly specified.⁴⁵⁴ The Administrator will make such maps available for public inspection by competitors and other interested parties. We will require that, when submitting information in support of Path Three self-certification, an incumbent carrier provide the Administrator with publicly available information that allows competitors to verify and reproduce the algorithm used to determine zone support levels. Similarly, we will require carriers electing Path One to submit to the Administrator a copy of certifications to a state commission or appropriate regulatory authority that they will not disaggregate and target support. Carriers selecting Path Two must submit a copy to the Administrator of the order by the state commission or appropriate regulatory authority approving the disaggregation plan submitted, along with a copy of the disaggregation plan itself. These requirements are consistent with the those adopted in the *Rural Task Force Order* and do not impose additional requirements on rate-of-return carriers.⁴⁵⁵

175. *Section 254(e) Certifications.* Section 254(e) provides that a carrier receiving universal service support must use that support “only for the provision, maintenance, and upgrading of facilities and service for which the support is intended.”⁴⁵⁶ In the *Rural Task Force Order*, we set forth rules requiring a state that wishes to receive federal universal service high-cost support for rural carriers within its territory to file a certification with the Commission stating that all federal high-cost funds flowing to rural carriers in such state will be used in a manner consistent with section 254(e).⁴⁵⁷ In addition, in the *Interstate Access Support Order*, the Commission adopted certification rules for the receipt of interstate access support.⁴⁵⁸

176. In the *Rural Task Force Order*, we addressed federal universal service support for intrastate rates and we required states to file a certification of section 254(e) compliance with the Commission because states have jurisdiction over rates for intrastate services. In this Order, we

⁴⁵³ See *id.* at §§ 36.611, 36.612, 54.307. Under section 54.307, competitive carriers submit line counts as of December 30 by the subsequent July 31, March 30 line counts by September 30, July 31 line counts by December 30, and September 30 line counts by March 30. *Id.* at § 54.307(c)(1)-(4). To make this rule consistent with sections 36.611 and 36.612, the “as of” dates for the line count data are changed to December 31, March 31, and June 30. The September 30 line count data filed on March 30 remains unchanged.

⁴⁵⁴ See *Rural Task Force Order*, 16 FCC Rcd at 11307-08 para. 161; see also 47 C.F.R. § 54.315(f).

⁴⁵⁵ *Id.* at 11307-08 paras. 160-61.

⁴⁵⁶ 47 U.S.C. § 254(e).

⁴⁵⁷ *Rural Task Force Order*, 16 FCC Rcd at 11317-20 paras. 187-93; see also 47 C.F.R. § 54.314.

⁴⁵⁸ See *Interstate Access Support Order*, 15 FCC Rcd at 13062 para. 232.

address federal support for interstate rates, a matter over which the Commission has jurisdiction.⁴⁵⁹ Thus, to ensure that carriers receiving Interstate Common Line Support and LTS will use that support in a manner consistent with section 254(e), we shall require carriers seeking such support to file a certification with the Commission and the Administrator. This requirement is consistent with rules adopted in the *Interstate Access Support Order*.⁴⁶⁰ This certification requirement will be applicable to rate-of-return carriers and competitive eligible telecommunications carriers seeking support from our Interstate Common Line Support mechanism. The certification shall be filed with the Commission and the Administrator on March 31, 2002, at the same time a carrier files its first set of line count data with the Administrator. Such certification shall be filed in CC Docket No. 96-45 annually thereafter on June 30. The certification may be filed in the form of a letter and must state that the carrier will use its Interstate Common Line Support and LTS only for the provision, maintenance, and upgrading of facilities and service for which support is intended. In the event that a certification is filed untimely, the carrier will not become eligible for support until the second calendar quarter after the certification is filed.⁴⁶¹ Failure to file a certification will preclude a carrier from receiving Interstate Common Line Support or LTS. Carriers that fail to abide by their certification, or otherwise violate section 254(e), shall be subject to enforcement action by the Commission.

c. Carrier Recovery of Universal Service Contributions

177. We hereby effectuate the Fifth Circuit's recent decision in *COMSAT Corp. v. FCC*.⁴⁶² In that decision, the court held that incumbent LECs' practice of recovering their universal service contributions through access charges to interexchange carriers constituted an implicit subsidy, and that the Commission's rules permitting that practice to continue at a rate-of-return carrier's discretion violated section 254(e) of the Act.⁴⁶³ We note that the Common Carrier Bureau recently granted a waiver to NECA to enable rate-of-return carriers to comply with the Fifth Circuit's decision.⁴⁶⁴ The waiver permits rate-of-return carriers to include in their tariff filings an end user charge to recover their universal service contributions. Consistent with the *Interstate Access Support Order*, we amend the Commission's rules to require that all incumbent LECs, including rate-of-return carriers, recover universal service contributions only through end user charges. Rate-of-return carriers that have not done so already shall eliminate the recovery of universal service contributions through their access charges.⁴⁶⁵ Consistent with

⁴⁵⁹ See *Rural Task Force Order*, 16 FCC Rcd at 11318 n.446 ("Because the Commission has primary jurisdiction over interstate rates, oversight of the use of LTS lies with the Commission. . . . We anticipate addressing certification of LTS when we address interstate access reform in the MAG proceeding." (citations omitted)).

⁴⁶⁰ See 47 C.F.R. § 54.809; see also *Interstate Access Support Order*, 15 FCC Rcd at 13062 para. 232.

⁴⁶¹ For example, if a carrier files its initial 254(e) certification after March 31, 2002, but on or before June 30, 2002, the carrier would not be eligible for support until the fourth quarter of 2002.

⁴⁶² *COMSAT Corp. v. FCC*, 250 F.3d 931, 938-40 (5th Cir. 2001).

⁴⁶³ *Id.* at 938.

⁴⁶⁴ See *Waiver of Sections 69.3(a) and 69.4(d) of the Commission's Rules*, CCB/CPD 01-15, Order, DA 01-1429 (Com. Car. Bur. rel. Jun. 14, 2001) (*NECA Waiver Order*).

⁴⁶⁵ See *NECA Waiver Order* at para. 3; 47 C.F.R. § 69.4(d). NECA has implemented an end user charge for the recovery of universal service contributions for carriers that participate in the NECA common line pool.

the restrictions on the recovery of universal service contributions by price cap carriers, rate-of-return carriers shall not assess a separate universal service end user charge on Lifeline customers.⁴⁶⁶

d. Lifeline Support Amounts

178. We adopt the MAG proposal that any increase in the SLC be accompanied by a corresponding increase to the first tier of federal Lifeline support by the amount necessary to cover any increase in the SLC.⁴⁶⁷ Such an increase in support is consistent with the principles of the 1996 Act as outlined in the *Universal Service First Report and Order* because it will provide sufficient support to ensure that qualifying low-income consumers have access to telecommunications services at affordable and reasonably comparable rates.⁴⁶⁸ Increasing Lifeline support also is consistent with the Commission's action in the *Interstate Access Support Order*, in which it similarly increased Lifeline support commensurate with the SLC cap increases adopted there.⁴⁶⁹ Without such an increase in Lifeline support, the SLC increases that we adopt today would negatively and disproportionately affect low-income subscribers by increasing the cost of basic telephone service. Consistent with the Commission's decision in the *Universal Service First Report and Order*, this first-tier Lifeline support shall be available to all qualifying low-income consumers being served by an eligible telecommunications carrier, regardless of whether the carrier charges a SLC.⁴⁷⁰ As the Commission stated in the *Universal Service First Report and Order*, an incumbent LEC's SLC is a reasonable proxy for the interstate portion of other eligible telecommunications carriers' costs. Accordingly, allowing eligible telecommunications carriers to receive federal support for providing first-tier Lifeline support is a competitively neutral way to encourage carriers to serve qualifying low-income consumers.⁴⁷¹

E. Other MAG Proposals

1. Section 254(g)/IXC Requirements

a. Background

179. In section 254(g) of the Act,⁴⁷² Congress codified the Commission's pre-existing geographic rate averaging and rate integration policies.⁴⁷³ The Commission implemented section

⁴⁶⁶ See *Interstate Access Support Order*, 15 FCC Rcd at 13057-58 para. 218-220; see also *NECA Waiver Order* at para. 3.

⁴⁶⁷ See *MAG Notice*, 16 FCC Rcd at 519.

⁴⁶⁸ *Universal Service First Report and Order*, 12 FCC Rcd at 8954 paras. 332-34.

⁴⁶⁹ *Interstate Access Support Order*, 15 FCC Rcd at 13056 paras. 216-17. We further note that rules adopted by the Commission in that order automatically operate by their own terms to achieve the Lifeline increase that we adopt today. 47 C.F.R. § 54.403(a).

⁴⁷⁰ *Universal Service First Report and Order*, 12 FCC Rcd at 8970 para. 366.

⁴⁷¹ *Id.* at 8969-70 para. 365.

⁴⁷² 47 U.S.C. § 254(g).

254(g) by adopting two requirements.⁴⁷⁴ First, providers of interexchange telecommunications services are required to charge rates in rural and high-cost areas that are no higher than the rates they charge in urban areas.⁴⁷⁵ This is known as the geographic rate averaging rule. Second, providers of interexchange telecommunications services are required to charge rates in each state that are no higher than in any other state.⁴⁷⁶ This is known as the rate integration rule. In the *Geographic Rate Averaging Order*, the Commission explained that geographic rate averaging benefits rural areas by providing a nationwide telecommunications network whose rates do not reflect “the disproportionate burdens that may be associated with common line recovery costs” in rural areas.⁴⁷⁷ The Commission also noted that geographic rate averaging ensures that rural customers will share in lower prices resulting from nationwide interexchange competition.⁴⁷⁸ Similarly, the Commission enunciated that its policy of integrating “offshore points” such as Hawaii and Alaska into the mainland’s interstate interexchange rate structure makes the benefits of growing competition available throughout the nation.⁴⁷⁹

180. The MAG proposes a number of new or additional requirements on interexchange carriers: (1) “[p]roviders of interstate interexchange telecommunications services must offer customers in rural and high-cost areas of the United States the same optional calling plans, including discount or volume-based plans, that are available to their customers in urban areas[;]” (2) “[p]roviders of interstate interexchange telecommunications services in rural and high-cost areas of the United States must pass through to long distance customers the savings that IXC’s realize from lower access rates charged by Path A LECs and Path B LECs[;]” and (3) “[p]roviders of interstate interexchange telecommunications services in rural and high-cost areas of the United States are prohibited from imposing minimum monthly charges on their residential customers.”⁴⁸⁰ According to the MAG, these requirements would help to “ensur[e] that IXC’s will comply fully with the geographic averaging of section 254(g) of the Act.”⁴⁸¹

181. As part of the *Interstate Access Support Order*, CALLS members AT&T and Sprint made commitments to pass through to consumers the savings realized from lower switched access rates.⁴⁸² The Commission explained that consumers in all areas would benefit

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⁴⁷³ See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Report and Order, 11 FCC Rcd 9564 paras. 3-5, 9566-69 para. 9 (citing S. Rep. No. 230, 104th Cong., 2d Sess. 1) (1996) (*Geographic Rate Averaging Order*).

⁴⁷⁴ *Id.* at 9565-66 para. 2.

⁴⁷⁵ 47 C.F.R. § 64.1801; see *Geographic Rate Averaging Order*, 11 FCC Rcd at 9568-69 para. 9, 9574 para. 20.

⁴⁷⁶ 47 C.F.R. § 64.1801; see *Geographic Rate Averaging Order*, 11 FCC Rcd at 9588 para. 52.

⁴⁷⁷ *Id.* at 9567 para. 6.

⁴⁷⁸ *Id.*

⁴⁷⁹ *Id.* at 9588 para. 52.

⁴⁸⁰ See *MAG Notice*, 16 FCC Rcd at 564.

⁴⁸¹ See *MAG Reply* at iv.

⁴⁸² See *Interstate Access Support Order*, 15 FCC Rcd at 12996-97 para. 88 (citing Letter from Joel E. Lubin, Federal Government Affairs, AT&T, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 2

(continued....)

from such savings “[b]ecause long-distance providers must offer their geographically-averaged rates to all of their customers, including those served by rate-of-return carriers.”⁴⁸³ In addition, CALLS members AT&T and Sprint committed to offer basic long distance rate plans with no monthly minimum charge.⁴⁸⁴

b. Discussion

(i) Optional Calling Plans

182. We do not adopt the MAG’s proposal for a new rule requiring interexchange carriers to offer the same optional calling plans in urban and rural areas, because interexchange carriers already are under statutory and regulatory obligations to do so. We agree with several commenters that the MAG’s proposal is unnecessary and would create undue confusion.⁴⁸⁵ Certainly, we share the same goals as MAG in working to ensure that rural Americans receive the benefits of competition and choices in the interexchange services market, and we remain committed to enforcing our long and well-established policy of geographic rate averaging and rate integration in that regard.

183. Under the Commission’s rules implementing section 254(g) of the Act, interexchange carriers must offer consumers in rural and urban areas the same optional calling plans.⁴⁸⁶ The limited exception to this requirement allows interexchange carriers to offer optional calling plans on a geographically-limited basis as part of a temporary promotion which does not exceed 90 days.⁴⁸⁷ Contrary to the suggestions of some commenters, however, this limited exception does not exempt optional calling plans from geographic rate averaging requirements.⁴⁸⁸ Indeed, the Commission previously has explained that “we have not in the past exempted from our geographic rate averaging policy entire groups of services, such as contract tariffs, negotiated arrangements, or optional calling plans, where carriers offer discounted rates on a permanent or long-term basis. The record is clear, in fact, that we have required optional

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(March 30, 2000) (*AT&T Letter*), and Letter from Richard Juhnke, General Attorney, Sprint, to Magalie Roman Salas, Secretary, Federal Communications Commission, at 2 (filed Feb. 25, 2000) (*Sprint Letter*)).

⁴⁸³ *Id.*

⁴⁸⁴ *Id.* at 13067 para. 243.

⁴⁸⁵ See, e.g., Letter from Herbert E. Marks, Esq., and Bruce A. Olcott, Esq., on behalf of State of Hawaii to Katherine Schroder, Chief, Accounting Policy Division, Federal Communications Commission, at 2 (June 18, 2001) (*State of Hawaii Letter*).

⁴⁸⁶ 47 C.F.R. § 64.1801.

⁴⁸⁷ See *Geographic Rate Averaging Order*, 11 FCC Rcd at 9574 para. 20 (“Temporary promotions involve discounts from basic rate schedules as well as limited sign-up periods for the promotional discount rates.”), 9577-78 paras. 27, 29-30 (The Commission permitted carriers “as part of temporary promotions not available throughout a carrier’s service area, to offer discounted promotional rates for no more than 90 days ” with expectations that this policy “will not, when viewed over a number of years, reflect a pattern of undue discrimination against rural or high-cost areas. Thus, we expect that, viewed over time, temporary promotions will be offered in rural and high-cost areas, as well as to urban customers.”); see also State of Alaska Reply at 6, State of Hawaii Reply at 4, *State of Hawaii Letter* at 1-5.

⁴⁸⁸ See Global Crossing Comments at 10, Sprint Comments at 11.

calling plans to be generally available throughout a carrier's service area[.]”⁴⁸⁹ Optional calling plans are also subject to rate integration requirements.⁴⁹⁰

184. The Commission defined a temporary promotion as not exceeding 90 days so as to provide a sufficient time for “a targeted promotional offering to attract interest in new or revised services, but not so long as to undermine our geographic rate averaging requirement.”⁴⁹¹ Thus, with the exception of short-term, temporary promotions, optional calling plans offered by interexchange carriers are subject to the geographic rate averaging and rate integration requirements set forth in section 254(g) of the Act and our rules.⁴⁹²

185. The MAG contends that interexchange carriers have refused to provide the same discounted calling plans to rural areas that are available in urban areas, and therefore, that its proposed rule is necessary to “put[] teeth” into our existing policy and rules.⁴⁹³ We disagree. First, we are not persuaded that the MAG proposal would strengthen our existing policy and rules. As the MAG acknowledges, the Commission already has “ample authority under the Act to enforce IXC’s obligations pursuant to section 254(g) and regulations that the Commission adopts thereunder.”⁴⁹⁴ Second, we agree with commenters that adopting new and duplicative requirements may create confusion regarding our rules rather than lending them clarity.⁴⁹⁵ Finally, the record does not demonstrate a pattern of undue discrimination against rural and high-cost areas that would warrant reexamination of the efficacy of our existing rules and requirements. In this regard, the record contains general assertions of non-compliance rather than any specific allegations. The record does not indicate a significant number of complaints relating to this issue being filed with the Commission or elsewhere. For these reasons, we do not adopt the MAG proposal to add a new rule that would duplicate existing requirements for interexchange carriers to offer rural and urban areas the same optional calling plans.

⁴⁸⁹ *Geographic Rate Averaging Order*, 11 FCC Rcd at 9577 para. 28.

⁴⁹⁰ *Id.* at 9588-89 para. 52 (stating that the Commission did not forbear from applying the rate integration requirement of section 254(g)).

⁴⁹¹ *Id.* at 9578 para. 29.

⁴⁹² See *State of Alaska Reply* at 10-11, *State of Hawaii Reply* at 1-5.

⁴⁹³ Wisconsin Commission Comments at 7, MAG Reply at 13-14.

⁴⁹⁴ MAG Comments at 31. The annual certifications required by our rules “emphasize the importance we place on rate averaging and rate integration requirements of the 1996 Act and put carriers on notice that they may be subject to civil and criminal penalties for violations of these requirements, especially willful violations.” See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Second Report and Order, 11 FCC Rcd 20730 para. 83 (1996) (*Detariffing Order*); see also 47 C.F.R. § 64.1900 (requiring a nondominant interexchange carrier to file an annual certification signed by an officer of the company under oath attesting to the company’s compliance with section 254(g) requirements). Because public information about interexchange carrier rates and services will continue to be readily available, either private parties or the Commission are able to initiate enforcement action against carriers that violate our requirements. See *Policy and Rules Concerning the Interstate, Interexchange Marketplace*, CC Docket No. 96-61, Order, 15 FCC Rcd 22321, 22327 para. 15 (2000) (*Detariffing Transition Order*) (requiring IXCs to post information at public information sites and on Internet websites upon detariffing mass-market consumer services, and consistent with section 61.87(b) of the Commission’s rules, requiring carriers to indicate on cancelled tariffs the addresses of websites and public information sites where rates, terms and conditions can be found); see also 47 U.S.C. § 208 (filing complaints with the Commission).

⁴⁹⁵ See, e.g., *State of Hawaii Letter* at 2; but see MAG Reply at 14.

(ii) Pass-through

186. We conclude that adoption of the MAG proposal to impose an administrative requirement that requires interexchange carriers to pass through savings from lower access rates to consumers in the form of lower per-minute long distance rates is unwarranted at this time. It is our expectation that competition in the long distance telecommunications market will ensure that consumers realize significant benefits from the access charge reforms that we adopt in this Order. We conclude that the MAG proposal is inconsistent with our deregulatory approach to the highly competitive interexchange services market. We also conclude that the administrative costs of the proposed requirement would outweigh the benefits. Moreover, we will diligently continue to enforce provisions of the Act which are designed to ensure that interstate services and rates offered by interexchange carriers in high-cost and rural areas are just and reasonable.

187. We decline to impose regulatory mandates that might hinder the competitive market for interexchange services and the deregulatory objectives of the 1996 Act. The continuing decline in long distance prices is a significant indication that competition in the long distance market is producing the desired consumer benefits.⁴⁹⁶ The MAG's proposed requirement would be inconsistent with the Commission's policy of progressively deregulating interexchange carriers, which, because they lack market power in providing interstate, domestic, interexchange services, are non-dominant.⁴⁹⁷ The Commission previously rejected a similar proposal, finding that market forces would compel interexchange carriers to pass through access charge reductions.⁴⁹⁸ Unlike the MAG proposal, the pass-through approved in the *Interstate Access Support Order* was a voluntary commitment by certain interexchange carriers.⁴⁹⁹ Accordingly, we believe that we should rely on competition to ensure that consumers realize benefits from the access charge reforms we adopt in this Order.⁵⁰⁰

188. We also observe that implementing the MAG proposal would entail burdensome and significant administrative costs associated with reporting, measuring, monitoring and

⁴⁹⁶ From 1992 through 1999, average interstate long distance revenues decreased from 15 cents per minute to 11 cents per minute. See Industry Analysis Division, Common Carrier Bureau, Federal Communications Commission, Telecommunications Industry Revenues: 1999, Table 9, page 25.

⁴⁹⁷ Since the early 1980s, the Commission has gradually moved from applying a "full panoply" of regulatory requirements to one in which pricing and other regulations have been replaced by market forces. Most recently, the Commission completed its policy of detariffing long distance services, based on the principle that market forces will generally ensure that rates remain reasonable and that carriers have the same incentives and rewards that firms in other competitive markets confront. See *Detariffing Order*, 11 FCC Rcd at 20733 paras. 4, 21; see also AT&T Comments at 20, Global Crossing Comments at 10, NASUCA Comments at 11-12, WorldCom Comments at 20.

⁴⁹⁸ See *Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Fourth Report and Order, 12 FCC Rcd 16642, 16717 para. 185 (1997) (*Fourth Access Charge Reform Order*); accord *Report in Response to Senate Bill 1768 and Conference Report on H.R. 3579*, Report to Congress, 13 FCC Rcd 11810, 11827-28 para. 28 (1998) (substantial competition in the interstate long distance market "creates strong incentives for carriers to reflect reductions in their costs through lower rates.").

⁴⁹⁹ See *Interstate Access Support Order*, 15 FCC Rcd at 13068-69 para. 246 (citing *AT&T Letter* and *Sprint Letter*); see also Excel Comm'n's Reply at 7.

⁵⁰⁰ See AT&T Comments at 20, Competitive Universal Service Coalition Comments at 21, Qwest Comments at 7-8, WorldCom Comments at 20.

enforcement mechanisms.⁵⁰¹ Because many interexchange carriers could be “small entities” within the meaning of the Regulatory Flexibility Act, we are also reluctant to impose regulatory burdens that could be barriers to small business competitiveness in the long distance industry.⁵⁰² Having considered the potential economic impact of the MAG proposal and the available alternative approaches, as we are required to do under the Regulatory Flexibility Act, we conclude that imposing this new regulatory requirement on interexchange carriers would not be reasonable under the circumstances.⁵⁰³

189. We will adhere to our policy of ensuring that rates continue to be just and reasonable.⁵⁰⁴ We emphasize that if market forces are insufficient to cause non-dominant interexchange carriers to offer prices or terms that are just, reasonable, and non-discriminatory consistent with Section 201 and Section 202 of the Act, parties may file complaints that we can investigate and adjudicate pursuant to Section 208 of the Act.⁵⁰⁵ No evidence is presented here that long distance rates are unjust, unreasonable or discriminatory, or that rates would become unlawful following the access reductions we have ordered.⁵⁰⁶ Consumers have remedies available to them if violations of our policies and requirements occur. We are not persuaded that there is a present need for regulatory action.⁵⁰⁷

190. In the *Interstate Access Support Order*, we pointed out that all consumers, including those not served by price cap carriers, would benefit from reduced per-minute access charges as a result of the reforms we approved.⁵⁰⁸ Likewise, we anticipate that the reforms we adopt here will benefit all Americans as reduced access rates facilitate market entry and competition. We also believe these reforms will particularly help consumers in rural areas by fostering greater competition and choice of interexchange services in these areas. We recognize that regulatory mandates are sometimes necessary even when there is competition in a market, to ensure that all Americans, including those in rural and high-cost areas, receive the benefits of competition. For example, when we ordered detariffing for interstate, domestic, interexchange services for non-dominant interexchange carriers, we pointed out that we were in no way departing from our historic commitment to protect consumers against abusive and anti-competitive practices.⁵⁰⁹ As we have done in the past, we will continue to evaluate how

⁵⁰¹ See Alaska Commission Comments at 6, Excel Comm’ns Reply at 6-7, Iowa Utilities Board Reply at 4.

⁵⁰² 5 U.S.C. §§ 601, *et seq.*

⁵⁰³ See *id.* at § 604.

⁵⁰⁴ See *Detariffing Order*, 11 FCC Rcd at 20746-47 para. 27; *Motion of AT&T to be Reclassified as a Non-Dominant Carrier*, Order, 11 FCC Rcd 3271, 3282 para. 13 (1995) (*AT&T Reclassification Order*); *Policy and Rules Concerning Rates for Competitive Common Carrier Services and Facilities Authorizations Therefor*, CC Docket No. 79-252, First Report and Order, 85 FCC 2d 1, 4 para. 6 (1980).

⁵⁰⁵ 47 U.S.C. §§ 201-202, 208.

⁵⁰⁶ See Global Crossing Comments at 10, Qwest Comments at 7-8, Sprint Comments at 10-11.

⁵⁰⁷ See, e.g., California Commission Comments at 26, Florida Commission Comments at 3-5, Rate-of-Return Coalition Comments at 6.

⁵⁰⁸ See *Interstate Access Support Order*, 15 FCC Rcd at 12996-97 para. 88.

⁵⁰⁹ See *Detariffing Order*, 11 FCC Rcd at 20733 para. 5 (“We reaffirm our pledge to use our complaint process to enforce vigorously our statutory and regulatory safeguards against carriers that attempt to take unfair advantage of
(continued....)”)

consumer safeguards and benefits can best be achieved, whether through competition or regulatory means.

(iii) Minimum Monthly Charges

191. We do not adopt the MAG proposal to prohibit interexchange carriers from charging minimum monthly fees to residential customers. We conclude that such a prohibition is unnecessary and would have the unintended consequence of impeding competition and limiting consumer choice, contrary to the intent of the 1996 Act.

192. Consumers in both rural and urban areas currently have the choice of at least one long distance calling plan that does not have a minimum monthly charge.⁵¹⁰ Pursuant to the *Interstate Access Support Order*, AT&T and Sprint agreed to offer at least one plan without a minimum monthly charge to residential customers.⁵¹¹ As set forth above, our geographic rate averaging rules require that these plans be offered to all areas. The Commission found that these commitments would “help ensure that low-volume users of long distance service share in the benefits of the 1996 Telecommunications Act and the pro-competitive reforms that the Commission has adopted.”⁵¹²

193. A blanket prohibition on all minimum monthly charges, however, would have the unintended consequence of limiting consumer choice by restricting the availability of optional calling plans. Many optional calling plans provide for a minimum monthly fee and offer a lower per-minute rate than would otherwise be available. We agree with commenters that restricting such plans could adversely affect consumers by depriving them of a choice that might serve their individual needs, as well as those of the interexchange carrier offering the plans.⁵¹³ Accordingly,

(...continued from previous page)

American consumers. Moreover, when interstate, domestic, interexchange services are completely detariffed, consumers will be able to take advantage of remedies provided by state consumer protection laws and contract law against abusive practices.”).

⁵¹⁰ See Florida Commission Comments at 4.

⁵¹¹ See *Interstate Access Support Order*, 15 FCC Rcd at 13067 para. 243 (“AT&T has pledged to offer for at least three years – and possibly as long as five – a basic residential plan that has no monthly recurring charge and no minimum usage requirement. Sprint has also committed to offering at least one basic rate plan without a minimum usage fee for the duration of the CALLS plan. . . . Bell Atlantic has also targeted two long-distance plans to residential, low-volume users by eliminating minimum use charges. Although MCI did not sign on to the CALLS proposal, it also offered a plan that has no minimum monthly charges.”); AT&T Comments at 20 (citing *Interstate Access Support Order*, Appendix D-1 to D-2, *AT&T Letter*).

⁵¹² *Interstate Access Support Order*, 15 FCC Rcd at 13068-69 paras. 245-46 (“Our decision to adopt the CALLS Proposal, and to conclude the low-volume inquiry, is based in large part on the availability of interstate long-distance plans that meet the needs of low-volume users. Sprint and AT&T have committed to making such plans available . . . they will eliminate their PICC pass-through charges for residential and single-line business customers, offer at least one basic rate plan that does not contain minimum usage charges, [and] freeze the per-minute rates on certain plans.”).

⁵¹³ See, e.g., Qwest Comments at 8; see also State of Alaska Reply at 10 (“Because many optional calling plans provide for a monthly minimum fee and these plans must be made available in rural areas, the State disagrees with that portion of the MAG’s proposed rule that would prohibit interexchange carriers from offering pricing plans with a minimum monthly charge.”).

we conclude that the MAG proposal to prohibit interexchange carriers from charging minimum monthly fees to residential customers is neither necessary nor in the public interest.

2. New Services

a. Background

194. In 1983, the Commission prescribed a rate structure for switched access services in Part 69 of its rules.⁵¹⁴ When an incumbent LEC offered a new switched access service,⁵¹⁵ it was required to obtain a waiver of Part 69 by demonstrating that “special circumstances warrant deviation from the general rule and such deviation will serve the public interest.”⁵¹⁶ As discussed below, the Commission has streamlined this requirement for most carriers, but it remains in force for rate-of-return carriers with 50,000 or fewer lines. The Commission’s rules generally provide that rate-of-return carriers must file tariffs and any required cost support for new services, including switched access, upon at least fifteen days’ notice.

195. In 1996, the Commission took steps to relax the new switched access service rules for price cap carriers, based on the finding that the Part 69 rate structure “imposes a costly, time-consuming, and unnecessary burden on incumbent LECs, and significantly impedes the introduction of new services.”⁵¹⁷ Accordingly, it modified the Part 69 rules to permit a price cap carrier to introduce a new switched access service by filing a petition showing that approval of the proposed new rate element would be in the public interest or that another LEC had established the same rate element.⁵¹⁸ In the *1998 Notice*, the Commission proposed to apply these streamlined provisions to rate-of-return carriers.⁵¹⁹

196. In 1999, the Commission decided to partially forbear from applying the Part 69 rules to mid-sized carriers, consisting of both price cap and rate-of-return carriers with more than

⁵¹⁴ 47 C.F.R. Part 69; see *Third Report and Order*, 93 FCC 2d at 241.

⁵¹⁵ See 47 C.F.R. § 61.3 (x) (defining a new service offering as “a tariff filing that provides for a class or sub-class of service not previously offered by the carrier involved and that enlarges the range of service options available to ratepayers”); see also *Policy and Rules Concerning Rates for Dominant Carriers*, CC Docket No. 87-313, Second Report and Order, 5 FCC Rcd 6786, 6824 para. 314 (1990) (“A new service may, but need not, include a new technology or functional capability. Many new services are, in essence, re-priced versions of already-existing services As long as the pre-existing service is still offered, and the range of alternatives available to consumers is increased, we will classify the service as new.”). We apply the same definition of a new service to rate-of-return carriers that is applicable to price cap carriers.

⁵¹⁶ 47 C.F. R. § 1.3 (permitting the Commission to grant waivers of its rules if “good cause” is shown); see also *Northeast Cellular Telephone Co. v. FCC*, 897 F. 2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F. 2d 1153 (D.C. Cir. 1969).

⁵¹⁷ *Access Charge Reform Price Cap Performance Review for Local Exchange Carriers*, CC Docket No. 94-1, Notice of Proposed Rulemaking, Third Report and Order, and Notice of Inquiry, 11 FCC Rcd 21354, 21490 para. 309 (1996) (*Price Cap Third Report and Order*).

⁵¹⁸ *Id.* at 21490 paras. 309-10; 47 C.F.R. § 69.4(g); *Access Charge Reform, Price Cap Performance Review for Local Exchange Carriers*, CC Docket Nos. 96-262 and 94-1, Fifth Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 142221, 14231 para. 17 (1999) (*Access Reform Fifth Order*).

⁵¹⁹ See *1998 Notice*, 13 FCC Rcd at 14270 para. 95.

50,000 access lines but fewer than two percent of the nation's access lines.⁵²⁰ Specifically, the Commission allowed these carriers to introduce new services or rate elements without requiring a Part 69 waiver or public interest showing. The Commission reasoned that forbearance would serve the public interest by promoting expeditious development and implementation of new services, as well as removing a competitive disadvantage for incumbent LECs.⁵²¹ The Commission also concluded that forbearance did not increase the chances of unreasonable discrimination or unjust and unreasonable rates,⁵²² and was not necessary to protect customers because they could continue to purchase existing services if the new service rate structure or rate level was unattractive.⁵²³ In the same order, however, the Commission refused to forbear from application of cost support filing requirements.⁵²⁴

197. Shortly thereafter, the Commission streamlined the new service rule for price cap carriers by eliminating the required public interest showing.⁵²⁵ The Commission cited the unnecessary delay in introducing new services, the benefit that new services may bring to some customers without harming others (because existing services would still be available), and the improved capability of price cap carriers to respond to competition from competitive carriers.⁵²⁶ In addition, price cap carriers were permitted to file tariffs for new services without cost support⁵²⁷ on one day's notice instead of the previously required fifteen-day notice period.⁵²⁸

198. The MAG proposes a new rule that "new access services of non-price cap LECs shall be introduced at prevailing market rates," and administered by NECA for those study areas in the pool.⁵²⁹

⁵²⁰ See *Petition for Forbearance of the Independent Telephone & Telecommunications Alliance*, AAD File No. 98-43, Sixth Memorandum Opinion and Order, 14 FCC Rcd 10840, 10842 para. 3 (1999) (*ITTA Forbearance Order*).

⁵²¹ *Id.* at 10847-48 para. 12.

⁵²² *Id.* at 10846-47 para. 10.

⁵²³ *ITTA Forbearance Order*, 14 FCC Rcd at 10847 para. 11.

⁵²⁴ *Id.* at 10852 para. 19. The Commission reasoned that cost support was necessary for it to determine that rates are just and reasonable for mid-sized carriers in light of the absence of any demonstrated competition. The Commission further reasoned that without this cost support, customers would not have sufficient information to determine whether to file a petition to reject or suspend and investigate a tariff, or whether to file a post-effective complaint.

⁵²⁵ See *Access Reform Fifth Order*, 14 FCC Rcd at 14240-41 para. 39.

⁵²⁶ *Id.* at 14240 para. 38.

⁵²⁷ *Id.* at 14240-41 para. 39. The Commission eliminated the new services test in sections 61.49(f) and (g) for all new price cap services except loop-based services. See also 47 C.F.R. § 61.49(3) (allowing a price cap carrier to submit tariff filings without cost data that introduce new price cap services, except loop-based services); 47 C.F.R. § 61.49 (generally providing that price cap carriers are required to file supporting material for tariff revisions of price cap and non-price cap services); 47 C.F.R. § 61.58 (containing notice requirements).

⁵²⁸ *Access Reform Fifth Order*, 14 FCC Rcd at 14241 para. 40. The Commission reasoned that no customer would be required to purchase the new service and that a longer notice period would delay new services and "undercut" the reasons for revising the new service rules. *Id.*; see also 47 C.F.R. § 61.58(4)(b).

⁵²⁹ See *MAG Notice*, 16 FCC Rcd at 465 para. 14, 568.

b. Discussion

199. We conclude that eliminating the Part 69 waiver requirement for rate-of-return carriers will serve the public interest by permitting the expeditious introduction of new switched access services or rate elements, encouraging technological innovation, and removing unnecessary regulatory barriers and delay in bringing consumers more benefits and choices. Instead, we apply the same streamlined rules to all rate-of-return carriers for introducing new switched access services or elements that are applicable to price cap carriers, with the exception of cost support and notice requirements. We already have streamlined the introduction of new services for rate-of-return carriers with more than 50,000 lines, as well as for price cap carriers.⁵³⁰ We believe that this policy is achieving its intended purpose, and that its benefits should be extended to all rate-of return carriers.⁵³¹

200. We find that requiring rate-of-return carriers to obtain a Part 69 waiver to introduce a new service causes unjustifiable delay, is unnecessary to ensure just and reasonable rates, and is contrary to the goal of developing competition. The introduction of a new service offers greater choice and does not by itself compel any access customer to reconfigure its access services.⁵³² Because the Commission needs time to review Part 69 waivers and petitions, this process unnecessarily delays the introduction of new services.⁵³³ We also agree with commenters that simplifying the process of introducing new services will enable the Commission to use its resources more efficiently.⁵³⁴

201. The delay caused by the Part 69 waiver requirement may place rate-of-return carriers at a competitive disadvantage.⁵³⁵ Even though rate-of-return carriers generally may not face the same kind of competition as price cap carriers, they are not insulated from competitive pressures.⁵³⁶ Competitive carriers that have notice of an incumbent rate-of-return carrier's Part 69 waiver or section 69.4(g) petition may be able to begin offering the service before the

⁵³⁰ See *ITTA Forbearance Order*, 14 FCC Rcd at 10840 (forbearing from certain rules to allow carriers to introduce new switched access services without a Part 69 waiver or 69.4(g) petition); *Access Reform Fifth Order*, 14 FCC Rcd at 142221 (revising certain rules to allow price cap carriers to introduce new switched access price cap services without a public interest showing).

⁵³¹ Rate-of-return carriers may establish new access services or elements in the NECA pool consistent with current procedures for new services.

⁵³² See *ITTA Forbearance Order*, 14 FCC Rcd at 10847 para. 11 ("By definition, a new service expands the range of service options available to consumers. Thus, the introduction of a new service does not by itself compel any access customer to reconfigure its access services and so cannot adversely affect any access customer. Because new services may benefit some customers, and existing customers may continue to purchase existing services if they find the new service rate structure or rate level unattractive, we conclude that requiring a waiver or the grant of a section 69.4(g) petition is not necessary to protect customers."); see also *Access Reform Fifth Order*, 14 FCC Rcd at 14239-40 para. 37.

⁵³³ *Id.* at 10847-48 para. 12; see also *Access Reform Fifth Order*, 14 FCC Rcd at 14231-32 para. 17, 14239-40 para. 37.

⁵³⁴ See Lexcom Tel. Co. Comments in CC Docket No. 98-77 at 24, NECA Comments in CC Docket No. 98-77 at 8.

⁵³⁵ See *ITTA Forbearance Order*, 14 FCC Rcd at 10847-48 paras. 11, 12; see also *Access Reform Fifth Order*, 14 FCC Rcd at 14240 para. 38. The Commission adopted Part 69 before the advent of local exchange competition.

⁵³⁶ See *supra*, § I.

incumbent carrier obtains permission to establish new rate elements for the new service, thus diminishing its incentives to develop and offer new services.⁵³⁷ Removal of this competitive disadvantage will enhance the competitiveness of incumbent rate-of-return carriers.⁵³⁸ Accordingly, we find that it serves the public interest to permit rate-of-return carriers to introduce new services on a streamlined basis.

202. We do not adopt the streamlined public interest showing standard for rate-of-return carriers, as we proposed in the *1998 Notice*. This decision is consistent with the underlying intent of our earlier proposal, which was to provide rate-of-return carriers with flexibility similar to that granted to price cap carriers in the introduction of new services.⁵³⁹ At the time of the *1998 Notice*, the public interest showing was the most current form of streamlined relief available, but the Commission later determined that this requirement, too, was unnecessarily burdensome.⁵⁴⁰ We now extend the flexibility currently available to price cap carriers and to many rate-of-return carriers to all rate-of-return carriers.

203. We are not persuaded by commenters who oppose granting flexibility to rate-of-return carriers for introducing new services due to concerns that lack of competition will result in monopoly pricing.⁵⁴¹ We do not have any evidence in the record that our streamlining policies have led to the problems that commenters fear. Additionally, we retain the ability to prevent carriers from imposing rates that are unjust, unreasonable or discriminatory.⁵⁴² Accordingly, we conclude that requiring a Part 69 waiver or a public interest showing is not necessary to ensure that rate-of-return carriers' rates for new services are just, reasonable and non-discriminatory.

204. We do not modify cost support or notice requirements for rate-of-return carriers filing tariffs to introduce new services or elements. The MAG did not propose any modifications to these requirements. Although the Commission's rules permit price cap carriers to introduce a new price cap service filing on one day's notice without cost support, price cap regulation contains an inherent incentive for maximizing efficiency that is not present under rate-of-return regulation.⁵⁴³ As a result, less stringent cost support and notice requirements are appropriate for

⁵³⁷ See *ITTA Forbearance Order*, 14 FCC Rcd at 10847-48 paras. 11-12; see also *Access Reform Fifth Order*, 14 FCC Rcd at 14240 para. 38.

⁵³⁸ *Access Reform Fifth Order*, 14 FCC Rcd at 14240 para. 38.

⁵³⁹ See *1998 Notice*, 13 FCC Rcd at 14269-70 paras. 93-95.

⁵⁴⁰ See *Access Reform Fifth Order*, 14 FCC Rcd at 14239-40 para. 37, n.4 ("Some parties assert that meeting the Section 69.4(g) public interest standard is as burdensome or almost as burdensome as meeting the Section 1.3 waiver standard.")

⁵⁴¹ See AT&T Comments at 22; see also Alaska Commission Comments at 3, California Commission Comments at 15, Competitive Universal Service Coalition Comments at 16.

⁵⁴² See *ITTA Forbearance Order*, 14 FCC Rcd at 10846-47 para. 10 ("Parties may still petition the Commission to reject, or suspend and investigate, the proposed rates in the tariff introducing the new service, and the Commission may investigate the rates under either section 204 or 205 of the Act. IXC's may also file complaints under section 208 of the Act, should they believe that unreasonable discrimination, or the imposition of rates that are unjust or unreasonable, has occurred."); see 47 U.S.C. §§ 201, 202, 204, 205, 208.

⁵⁴³ See 47 C.F.R. § 61.43 (requiring tariffs introducing a new service to be incorporated into the appropriate price cap basket and indices within a certain time period after the new service tariff takes effect).

price cap services. On the other hand, the Commission previously has found that without cost support, it would be unable to determine whether a rate-of-return carrier's rates are just and reasonable.⁵⁴⁴ In addition, rate-of-return carriers with 50,000 or fewer lines already are subject to reduced cost support burdens.⁵⁴⁵ Accordingly, we believe the cost support and fifteen-day notice requirements that generally apply to rate-of-return carriers are reasonable to provide the Commission and interested parties with sufficient time and opportunity to request cost support as appropriate.⁵⁴⁶

205. Furthermore, we do not believe that the difference between the one-day filing requirement for price cap carriers and the fifteen-day notice requirement for rate-of-return carriers will produce delays that are likely to cause any competitive disadvantage. The difference is only fourteen days, whereas the existing waiver requirement involves far longer delay while the Commission seeks comment on, considers, and acts upon a waiver petition. We also note that the Commission's rules provide a procedure by which carriers may request special permission in exceptional circumstances for waiving the fifteen-day notice requirement upon a showing of good cause.⁵⁴⁷ Therefore, we find that the benefits of maintaining the present cost support and notice requirements for rate-of-return carriers filing new switched access service tariffs outweigh any need or benefit to modify these rules at this time.

3. Prescription of the Authorized Rate of Return

a. Background

206. Rate-of-return carriers are permitted to charge rates that will allow them to recover their expenses, plus a reasonable rate of return on their net investment. The authorized rate of return is adjusted from time to time by the Commission as the cost of capital changes. The authorized rate of return was last prescribed in 1990, when it was set at 11.25 percent.⁵⁴⁸ The Commission in 1998 initiated a proceeding to represcribe the authorized rate-of-return for rate-of-return carriers.⁵⁴⁹

⁵⁴⁴ See *ITTA Forbearance Order*, 14 FCC Rcd at 10852 para. 19.

⁵⁴⁵ Small rate-of-return carriers face reduced cost support burdens because they are generally not required to submit cost support data at the time of filing, but only to make the cost support available upon request. See 47 C.F.R. § 61.38(2) (requiring cost support material for rate-of-return carriers with more than 50,000 lines to be filed with a new service tariff; however, rate-of-return carriers with 50,000 or fewer lines have the option instead to file pursuant to 47 C.F.R. § 61.39 which only requires cost support data to be available and submitted upon reasonable request by the Commission or interested parties). In addition, no cost support is required for a small rate-of-return carrier filing for a new service already offered by a price cap carrier in an adjacent area, if the rate-of-return carrier proposes rates that are no greater than the price cap carrier's. 47 C.F.R. § 61.39.

⁵⁴⁶ See 47 CFR §§ 61.39, 61.58 (explaining notice requirements).

⁵⁴⁷ See 47 CFR § 61.151.

⁵⁴⁸ *Represcribing the Authorized Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 89-624, Order, 5 FCC Rcd 7507 (1990).

⁵⁴⁹ *Prescribing the Authorized Unitary Rate of Return for Interstate Services of Local Exchange Carriers*, CC Docket No. 98-166, Notice Initiating a Prescription Proceeding and Notice of Proposed Rulemaking, 13 FCC Rcd 20561 (1998).

207. The MAG proposes retaining the current 11.25 percent authorized rate of return during the term of its plan and would have the Commission terminate the proceeding on the represcription of the authorized rate of return for rate-of-return carriers. MAG asserts that rate-of-return carriers will be more likely to invest in new facilities if they have reasonable assurances that they will be able to earn an adequate return on their investments over the life of the facilities.⁵⁵⁰

b. Discussion

208. We terminate the prescription proceeding in CC Docket No. 98-166 on the authorized rate of return. We also stay the effectiveness of section 65.101 of the Commission's rules, which otherwise would require initiation of a unitary rate of return prescription proceeding immediately as a result of termination of the CC Docket No. 98-166 proceeding. This will allow us the time necessary to comprehensively review the Part 65 rules to ensure that any future decisions we make are consonant with conditions in the marketplace.

209. We conclude that the record in the above-captioned proceedings is inadequate to permit us to determine the appropriate rate of return for rate-of-return carriers. Parties addressing this issue in response to the *MAG Notice* generally make broad statements of their positions. For example, commenters representing the interests of rate-of-return carriers state that the 11.25 percent reflects a realistic cost of capital in today's economy, noting the uncertainty of new regulations, developing competition, and an increasingly unfavorable capital market.⁵⁵¹ Other parties contend that the authorized rate of return is far above the level necessary to meet the expectations of investors, to attract new capital in current financial markets, and to reflect the current level of competition for interstate services.⁵⁵² Such general statements are inadequate to permit us to determine the appropriate rate of return for rate-of-return carriers. In addition, the record compiled in the CC Docket No. 98-166 proceeding is now more than two and one-half years old, and thus is no longer sufficient to permit a prescription of a new authorized rate of return.

210. We also conclude that it is appropriate to stay the effectiveness of section 65.101 of the Commission's rules, which otherwise would require initiation of a rate of return prescription proceeding immediately as a result of termination of the CC Docket No. 98-166 proceeding.⁵⁵³ The Part 65 rules, under which the CC Docket No. 98-166 proceeding was initiated, were adopted in 1995.⁵⁵⁴ Since that time, Congress has established competition as the fundamental policy for the telecommunications industry. Given the changed environment since the Part 65 rules were adopted, we find that it would be counterproductive to initiate a new

⁵⁵⁰ MAG Comments at 16.

⁵⁵¹ See, e.g., Innovative Telephone Comments at 8-9, Fred Williamson & Assoc. Comments at 8, Alaska Rural Coalition Reply at 7, Minnesota Indep. Coalition Reply at 4-5.

⁵⁵² See AT&T Comments at 17, n.20, Competitive Universal Service Coalition Comments at 15, GSA Comments at 15-16, Qwest Comments at 2.

⁵⁵³ See 47 C.F.R. § 65.101.

⁵⁵⁴ *Amendment of Parts 65 and 69 of the Commission's Rules and Reform to Interstate Rate of Return Represcription and Enforcement Processes*, CC Docket No. 92-133, Report and Order, 10 FCC Rcd 6788 (1995).

automatic review of rate-of-return carriers' authorized rate of return at this time without a complete review of the Part 65 procedures to determine if they are appropriate and workable. Staying the effectiveness of section 65.101 will allow us to comprehensively review the Part 65 rules to ensure that decisions we make are consonant with current conditions in the marketplace.

4. Jurisdictional Separations

211. Pursuant to the recommendations of the Federal-State Joint Board on Jurisdictional Separations, the Commission recently froze jurisdictional separations factors in a manner consistent with the MAG's proposal.⁵⁵⁵ The Commission found that freezing the jurisdictional separations factors for a period of five years (or until a comprehensive reform of separations can be completed) would promote stability and regulatory certainty for carriers by "minimizing any cost shift impacts on separations results that might occur as a result of circumstances not contemplated by the Commission's current Part 36 rules, such as growth in local competition and new technologies."⁵⁵⁶ Further, the Commission found that a freeze of separations factors and categories would promote simplicity and reduce administrative burdens for incumbent local exchange carriers.⁵⁵⁷ Because the Commission has already acted in a manner consistent with the MAG's proposal, we conclude that we need not address this proposal further in this proceeding.

V. FURTHER NOTICE OF PROPOSED RULEMAKING

212. In this Further Notice, we consider methods by which to build on the access charge reforms adopted today for rate-of-return carriers in the companion Report and Order. Initially, we explore options for developing an alternative regulatory structure that would be available to those rate-of-return carriers electing it. The incentive regulation plan included as part of the broader MAG plan reflects a considerable amount of work by the rate-of-return carrier segment of the industry. While we decline to adopt the MAG incentive plan as proposed, it may constitute a useful departure point from which to develop an alternative regulatory plan that will address the needs of rate-of-return carriers and their customers. Thus, we seek to build off the incentive regulation proposal contained in the MAG plan and our experience with price cap regulation for price cap carriers. In this regard, we will consider the widely varying operating circumstances of rate-of-return carriers, the implications of competitive and intrastate regulatory conditions on the options available, and the need to facilitate and ensure the deployment of advanced services in rural America. Second, responding to comments on the 1998 Notice, we will consider the appropriate degree and timing of pricing flexibility for rate-of-return carriers. Third, we seek further comment on the MAG's proposed changes to the Commission's "all-or-nothing" rule.⁵⁵⁸ In these ways, we seek to improve the efficiency of the

⁵⁵⁵ *Jurisdictional Separations Reform and Referral to the Joint Board*, CC Docket No. 80-286, Report and Order, 16 FCC Rcd 11382 (2001) (*Interim Separations Freeze Order*). The MAG plan proposes that jurisdictional separations factors should be frozen consistent with the *Recommended Decision* of the Federal-State Joint Board on Jurisdictional Separations. *MAG Notice*, 16 FCC Rcd at 462 para. 7; see *Jurisdictional Separations Reform and Referral to the Joint Board*, CC Docket No. 80-286, Recommended Decision, FCC 00J-2 (Jt. Bd. rel. July 21, 2000).

⁵⁵⁶ *Interim Separations Freeze Order*, 16 FCC Rcd at 11389 para. 12.

⁵⁵⁷ *Interim Separations Freeze Order*, 16 FCC Rcd at 11390 paras. 13-14.

⁵⁵⁸ See *infra*, § V.C.